(20,751.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 348.

EDWARD BONNER AND EDWARD L. BONNER, PLAINTIFFS IN ERROR,

vs.

HENRY P. GORMAN, ADMINISTRATOR OF THE ESTATE OF MARY A. COLE, DECEASED, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

INDEX.

	Original.	Print.
Transcript from St. Francis chancery court (No. 6065)	1	1
Caption	1	1
Complaint	2	1
Restraining order	10	6
Injunction bond	11	6
Demurrer to complaint	13	8
Order overruling demurrer	14	8
Answer	15	8
Separate answer of Mrs. Winsett	21	12
Agreement as to evidence	23	13
Deposition of J. R. Beasley	24	14
Deposition of L. P. Featherston	30	18
Administrator Featherston's report	36	21
Administrator Featherston's report confirmed	37	22
Claims filed and allowed against the estate of Mary A. Cole, deceased	38	23
Administrator Featherston's first settlement	39	23
Vouchers to L. P. Featherston's first settlement	40	24
Administrator Featherston's first settlement continued	41	24

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	Original.	Print.
First report of Administrator Gorman, administrator in succession	43	25
Administrator Gorman's first settlement	44	26
Administrator Gorman's second settlement	45	27
Administrator Gorman's third settlement	47	28
Final settlement of L. P. Featherston	48	29
Statement of final settlement of Administrator Featherston's account	49	29
Vouchers filed with last settlement of Administrator Featherston	50	30
Probate court order	55	34
Warranty deed from Mrs. M. E. Winsett to Eddie C. Williams	58	36
Warranty deed from Lola B. Jett and W. E. Jett to Eddie C. Williams	60	37
Deed from Wilkins and wife to Alice W. Featherston	62	38
Deed from Farley and wife to Alice W. Featherston	63	39
Order of probate court of February 29, 1899	64	40
Exceptions to Administrator Featherston's second final settlement	65	41
Deposition of W. L. Sellers	67	42
W. E. Jett	68	43
Louisa Jane McMillan	72	45
Walter Gorman	73	45
Exhibit "A"—Order of probate court	76	48
Agreement to take depositions	78	49
Deposition of Mrs. M. E. Winsett	78	49
Deposition of S. M. Bigham	81	50
Final decree	83	52
Cost bill	86	53
Clerk's certificate	86	53
Filing of transcript in the supreme court	87	54
Petition for certiorari	88	54
Writ of certiorari	89	55
Order of sale of January 26, 1894	90	55
Probate clerk's certificate	92	56
Motion for time to file briefs	93	56
Submission of cause	94	57
Decree of supreme court	95	57
Opinion in the supreme court	96	58
Petition for rehearing	101	62
Submission of the motion to rehear	102	62
Petition for rehearing denied	103	63
Transcript from St. Francis chancery court (No. 6612)	104	63
Caption	104	63
Decree	105	64
Mandate of supreme court of Arkansas	105	64
Clerk's certificate	108	65
Appeal to supreme court granted	109	66
Supersedeas bond	110	67
Filing transcript in supreme court	111	67
Attorney's certificate	112	68
Motion to advance and affirm as a delay case filed	113	68
Motion to advance, &c.	114	68

	Original.	Print.
Notice to opposing counsel of the filing of the motion	115	69
Appellants' response	116	70
Motion to advance and affirm set for submission April 15, 1907	118	71
Motion to advance and affirm submitted	119	72
Motion to advance and affirm granted	120	72
Opinion on the motion to advance and affirm	121	73
Authentication of the record	122	74
Assignment of errors	123	74
Petition for writ of error	125	76
Bond	126	77
Writ of error and allowance	128	78
Certificate of lodgment	129	79
Citation and service	130	79
Return to writ of error	131	80

1 No. 6065.

Caption.

Pleas Before E. D. Robertson, Judge St. Francis Chancery Court, on the 12th Day of May, 1905.

M. E. WINSETT ET AL., Appellants,
vs.
E. BONNER, Appellee.

Inj. Bill.

2 *Complaint.*

In St. Francis Chancery Court, December Term, 1903. In Equity.

E. BONNER, Plaintiff,
vs.
MRS. M. E. WINSETT, MRS. P. B. WILKINS, MRS. MAGGIE CHAPMAN, MRS. MATTIE BROOKS, MRS. W. E. JETT, MRS. IDA MCMILLEN, WILLIAM L. SELLERS, JOSEPH MOORE, MARY MOORE, and CORNELIA MOORE, Heirs-at-law of Mary A. Cole's Estate, and HENRY P. GORMAN, Administrator in Suc. of said Estate, Defendants.

Comes the plaintiff, E. Bonner, and respectfully shows the Honorable Court:

That on March 15, 1893, L. P. Featherstone filed his bond as administrator of the estate of Mary A. Cole, deceased, with W. E. Jett, P. B. Wilkins, W. H. Coffey and E. Bonner as his sureties, all of whom except plaintiff, are insolvent and W. H. Coffey is dead.

That the personal property of said estate was appraised Apr. 3, 1893, at $180.65, and real estate on Dec. 16, 1893 at $2100.00; the latter consisting of three separate parcels, the residence property appraised at $900.00, a store house in Forrest City at $1000, and 33 acres of land in St. Francis County at $200.00; making a total appraisement of real and personal property of $2280.65.

That the heirs of said estate and the amount of each interest were as follows: Mrs. Winsett one half, Mrs. Jett one twelfth, Mrs.
3 Wilkins one twelfth, Mrs. J. L. Farley one twelfth, Mrs. Brooks one twelfth, Mrs. Chapman one twelfth, Mrs. McMillen one thirty-sixth, Hugh Sellers one thirty-sixth, William L. Sellers one thirty-sixth. Mrs. McMillen is the half sister of Hugh and William L. Sellers, and Hugh Sellers and Mrs. J. L. Farley are dead, the latter leaving three children by a former husband whose names are Joseph, Mary and Cornelia Moore. Sellers left no widow or children.

That the claims probated against the estate of Mrs. Cole amounted to $246.42, and the claims not probated, but which were paid by administrator Featherstone before he made his first settlement,

amounted, as shown by voucher No. 1, to $154.76, making a total indebtedness of a little over $400.00.

That on May 6, 1893 for the consideration of $120.00, cash in hand paid, P. B. Wilkins and wife L. J. Wilkins conveyed to Alice W. Featherstone all of their interest in all the lands of Mrs. Cole's Estate. Said deed is recorded in record book 44, page 260.

That on May 13, 1893, for the consideration of $120.00, cash in hand paid, J. L. Farley and wife S. J. Farley conveyed to Alice W. Featherstone all of their interest in all the lands of Mary A. Cole's Estate. Said deed is recorded in Record Book 44 page 259.

That on May 29th, 1893, for the consideration of $500.00 cash in hand paid, Mrs. M. E. Winsett conveyed to Mrs. Eddie C. Williams her half interest in the residence property of Mary A. Cole's estate. Said deed is recorded in Record Book 34, page 573.

That on June 3, 1893, for the consideration of $417.00, the re-ce-pt of which was acknowledged, Margaret Chapman and husband Alfred Chapman, Mattie D. Brooks and husband S. M. Brooks, and Alice W. Featherstone and husband L. P. Featherstone, executed a joint deed conveying four twelfths interest in said residence property to Mrs. E. C. Williams, the said Alice W. Featherstone and husband conveying as purchasers the one-twelfth interest of Mrs. Farley and the one-twelfth interest of Mrs. Wilkins. Said deed is
4 recorded in Record Book 34, page 570.

That on June 7, 1893, for the consideration of $83.33, cash in hand paid, Lola B. Jett, and husband W. E. Jett, conveyed to Mrs. E. C. Williams their one twelfth interest in said residence property. Said deed is recorded in Record Book 34, page 568.

That on Nov. 7, 1893, administrator Featherstone, before he had made his first settlement, was ordered by the Probate Court to sell all the land belonging to the estate of Mrs. Cole, including said residence property, a store house in Forrest City and 33 acres of land in St. Francis County.

That on Dec. 16, 1893, said administrator Featherstone sold said store-house in Forrest City to D. M. Wilson for $700.00, and said 33 acres of land to James Fussell and Geo. P. Taylor for $200.00, but he did not sell said residence property.

That on Dec. 18, 1893, for the consideration of $27.75, cash in hand paid, Mrs. Ida McMillen and her husband James McMillen conveyed their one-thirty-sixth interest in said residence property to Mrs. E. C. Williams. Said deed is recorded in Record Book 34, page 569.

That on Dec. 30, 1893, by joint deed and for the consideration of $60.00 cash in hand paid, W. E. Jett as guardian conveyed to Mrs. E. C. Williams a one thirty sixth interest of William L. Sellers in said residence property, and L. P. Featherstone as guardian conveyed to Mrs. E. C. Williams a one thirty-sixth interest of Hugh Sellers in said residence property. Said joint deed is recorded in Record Book 34, page 567.

That on Jan. 15, 1894, administrator Featherston made to the Probate Court his report of sale of said store-house in Forrest City and the said 33 acres of land, and in the conclusion of that report

he said: "Your administrator found that the payment of the debts probated against the estate did not require him to sell the residence of his intestate, to-wit: Lots 5 and 6 in Block 11 in the town of Forrest City and before the day of sale the said residence
5 property was disposed of by the heirs. Your administrator asks that this sale be by the court confirmed."

That on the same day, Jan. 15, 1894, said report of sale was confirmed by C. F. Hinton, Probate Judge.

That on Jan. 25, 1894, upon the petition of the administrator, and with the consent of D. M. Wilson, James Fussell and Geo. P. Taylor, the sale of said land to them on Dec. 16, 1893, was set aside upon the ground that the records of the court showed that the personal property was amply sufficient to pay the probated debts and the court had no jurisdiction to order the sale of the land.

That on the same day Jan. 25, 1894, on petition of the administrator and on examination of the Sale Bill and claims legally exhibited against said estate, the court found that the personal property was not sufficient to pay the probated debts and ordered the administrator to sell said store house in Forrest City and said tract of land of 33 acres.

That on Jan. 26, 1894, administrator Featherstone filed his first settlement and vouchers showing that the personal property of the estate had been sold for $277.38; that $161.15 worth of this property had been bought by four of Mrs. Cole's heirs, to-wit: Mrs. J. L. Farley, H. S. Sellers, Mrs. W. E. Jett, and Mrs. P. B. Wilkins, who asked that the court allow the administrator to take credit by that amount as having been paid to the heirs; that he as administrator had paid out $164.76 in discharge of debts not probated, a list of which with the receipts of the parties to whom paid, were filed and marked Voucher No. 1, leaving the estate indebted to him in the sum of $64.92; that a sale of real estate would be necessary for the payment of debts; that Mrs. Cole was the owner of a store-house in Forrest City and a tract of land containing 32.83/100 acres, all in St. Francis County; and he prayed the court to make an order for the sale of said two parcels of land.

That in accordance with the order of sale made by the
6 Probate Court on Jan. 26, 1894, Featherstone sold as Adm'r on Feb. 17th, 1894, said tract of about 33 acres to James Fussell and George P. Taylor for $196.00 and took their notes for the purchase money; and he sold said storehouse to L. R. Grobmeyer for $956.00 and took two notes of $478.00 each. Said sale was confirmed by the Probate Court on Feb. 17, 1894, and Adm'r Featherstone's first settlement was confirmed by the Probate Court April 30, 1894.

That Administrator Featherstone collected one of the Grobmeyer notes for $478.00 and also collected the $196.00 from Fussell and Taylor for said 33 acres of land, making a total of $674.00 which went into his hands as administrator from the sale of said real estate.

That the other Grobmeyer note of $478.00 went into the hands of Henry P. Gorman, who was appointed in 1896 as administrator in Suc. of Mrs. Cole's estate, and has been collected.

That on March 29th, 1895, said administrator, Featherstone, obtained a judgment in the circuit court against James Fussell, administrator of the estate of John Cole, deceased, for $250.00 and costs, which judgment, amounting with interest to about $325.00, has been collected by administrator Gorman, making a total of about $800.00 which went into his hands.

That the said Featherstone moved from Arkansas to Texas in 1895, and when he left St. Francis County he did not owe the Cole Estate a solitary cent, but on the contrary said estate was indebted to him.

That in July, 1898, administrator Gorman made his 1st settlement showing that all the probated claims which remained unsettled had been paid and that he had a balance on hand of $313.26.

That in July 1899, E. Bonner and W. H. Coffey, sureties, filed the second and final settlement for administrator Featherstone, with vouchers, showing that said estate was indebted to him in the sum of $23.57.

That in October, 1899, administrator Gorman and Mrs.
7 M. E. Winsett, through their attorneys, Walter Gorman and John Gatling, filed exceptions to said settlement, in which they said that the amount collected by the said L. P. Featherstone from the proceeds of the sale of real estate was $687.23, being $1152.00 less the amount collected by administrator Gorman; but they did not say in those exceptions that Administrator Featherstone was justly indebted to the Cole Estate in the sum of $1000.00 for said residence property which was sold by the heirs in 1893, or that said settlement should be amended so as to include this item.

That on Jan. 29th, 1900, when said Featherstone was not present, either in person or by attorney, the probate court illegally charged said Featherstone as administrator with $1000.00 for said residence property, which had not been sold by him under an order of the probate court, and the proceeds of which had not been collected and appropriated by him to his own use, but on the contrary said residence property was legally sold and the proceeds received by the heirs themselves in 1893, the receipt of the purchase money being acknowledged in the deeds executed by them, a fact which was fraudulently concealed by said exceptors from Probate Judge Taylor when said settlement came up for consideration in the Probate Court.

That by illegally and unjustly charging said Featherstone with said residence property the Probate Court brought him out in debt to said estate in the sum of $991.28, for which judgment was rendered, and plaintiff is advised and insists that the probate court had no jurisdiction over said residence property on Jan. 29, 1900, all the debts of the estate having been paid, and that said judgment was procured by fraud and was utterly null and void.

That on Feb. 12, 1900, suit was brought in the circuit court of St. Francis County by said administrator Gorman against said Bonner and Coffey, two of said sureties, to enforce the payment of said $991.28, and on Feb. 16, 1900, said Featherstone filed his

affidavit for appeal to the circuit court from said Probate Court judgment.

8 That both of said cases were put on the docket and calendar of the circuit court for the March Term, 1900, were continued to the Sept. Term, and then continued again to the next March Term, 1901, at which time administrator Gorman got the Featherstone Appeal Case dismissed upon the ground that no order granting an appeal had been entered by the probate court, and filed a demurrer to the amended answer and cross-complaint of said sureties in the other case, which was sustained by the circuit and Supreme Courts, and judgment was entered in favor of administrator Gorman against said sureties, Bonner and Coffey, for $991.28 with interest from the date of said probate court judgment, without a trial upon the merits, which was refused as plaintiff is informed, upon the ground that the sureties could not in a court of law attack a judgment against their principal and have no remedy except in a court of equity by original bill.

That on June 2, 1902, Administrator Gorman made his second settlement showing that he had a balance on hand of $523.11, and in July 1903 he made a third settlement showing that he had a balance on hand of $481.88 belonging to the estate of Mary A. Cole, deceased.

That the judgment obtained by Administrator Gorman against said sureties, Bonner and Coffey is unjust and inequitable, but nevertheless it will be enforced immediately by execution and an irreparable injury will be done to said Bonner, the only solvent surety, unless said administrator Gorman and heirs of said estate are restrained by this honorable court from having an execution issued and levied upon the property of said Bonner.

The premises considered, plaintiff prays that process issue requiring the persons named herein as defendants to appear and answer each and all of the allegations of this bill, but they are excused from answering under oath, which is expressly waived; that a temporary restraining order be made by this honorable court, commanding the said administrator Gorman and each and all of the other persons named as defendants in this bill, to take no further

9 steps for the enforcement of said circuit or Supreme Court judgment in the case of Gorman *vs.* Bonner *et al.* until the final hearing of this suit in equity; that upon a final hearing, said temporary restraining order be made perpetual, and that the plaintiff be given all other, further and general relief to which he may be entitled.

And as in duty bound plaintiff will ever pray, etc.

This is the first application for an injunction in this case, and no injunction has been yet granted to stay proceedings on said judgment.

R. J. WILLIAMS,
J. R. BEASLEY,
Attorneys for Plaintiff.

STATE OF ARKANSAS, *County of St. Francis:*

E. Bonner says that he believes the statements of the foregoing complaint are true.

E. BONNER.

Subscribed and sworn to before me on this the 14th day of Dec. 1903.

G. B. MALLORAY,
Clerk of Circuit Court.

(Endorsed:) Filed in my office Dec. 14th, 1903. G. B. Malloray, Clerk.

10 *Restraining Order.*

Before Hon. E. D. Robertson, Chancellor 5th Chancery District, in Chambers, at Forrest City, in St. Francis County, Arkansas.

On this the 24th day of Dec. 1903 was presented to the undersigned as chancellor the bill of complaint filed by E. Bonner against H. P. Gorman as administrator of the estate of Mary A. Cole, deceased, and Mrs. M. E. Winsett *et al.* as heirs-at-law of the said Mary A. Cole, deceased, defendants, praying a temporary restraining order restraining the said parties defendants, their agents and attorneys from taking any proceedings whatever for the enforcement or execution of a judgment of the Supreme Court of Arkansas, wherein H. P. Gorman, as administrator as aforesaid obtained judgment against E. Bonner and W. H. Coffey as sureties on the bond of L. P. Featherstone, former administrator of the estate of the said Mary A. Cole, deceased, and upon consideration thereof, it is ordered that the clerk of the chancery court of St. Francis County, Arkansas, issue an order restraining the said defendants, and each of them, their agents and attorneys, from executing or attempting to execute the said judgment, until the further order of the chancery court of said county, upon the filing of a good and sufficient bond by the plaintiff in the sum of one thousand five hundred dollars, conditioned as prescribed by law.

E. D. ROBERTSON,
Chancellor 5th Circuit of Arkansas.

(Order of Chancellor directing Clerk to issue injunction Writ.)

11 St. Francis Chancery Court.

E. BONNER, Plaintiff,
vs.
M. E. WINSETT ET AL., Defendants.

Injunction Bond.

We, E. Bonner, principal, and E. L. Bonner surety, acknowledge ourselves indebted in the sum of fifteen hundred dollars to the de-

fendants in the above entitled cause, to-wit: Mrs. M. E. Winsett, Mrs. P. B. Wilkins, Maggie Chapman, Mattie Brooks, Mrs. W. E. Jett, Mrs. Ida McMillen, William L. Sellers, Joseph Moore, Mary Moore, Cornelia Moore and Henry P. Gorman, Administrator in succession Estate of Mary A. Cole, deceased.

But this obligation is to be void upon condition that the said E. Bonner pays to the said defendants, M. E. Winsett *et al.*, the damages which they or either of them may sustain by reason of the injunction in this action, if it is finally decided that said injunction ought not to have been granted.

Witness our hands, this the 29th day of Dec. 1903.

E. BONNER.
E. L. BONNER.

Approved:
G. N. MALLORAY, *Clerk.*

E. BONNER, Plaintiff,
vs.
M. E. WINSETT ET AL., Defendants.

Order of Injunction.

The State of Arkansas to Mrs. M. E. Winsett, Mrs. P. B. Wilkins, Mrs. Maggie Chapman, Mrs. Mattie Brooks, Mrs. Ida McMillan, William L. Sellers, Joseph Moore, Mary Moore, Cornelia Moore and Henry P. Gorman, Adm'r in Suc. of Mary A. Cole, deceased,
12 and their agents and attorneys:

You are all enjoined from all further proceedings upon the judgment of the Supreme Court of Arkansas, rendered at its May Term 1903, in favor of Henry P. Gorman, Adm'r in Suc. Estate of Mary A. Cole, deceased, against E. Bonner and W. H. Coffey for the sum of $1058.17, and costs, until further order of the chancery court of St. Francis County, Arkansas.

Witness my hand and seal of said court this the 29th day of December, 1903.

G. B. MALLORY,
Clerk of the Chancery Court.

As attorneys for all the defendants in the foregoing bond and order of injunction we hereby waive the service on them of a copy of the injunction writ. This Dec. 29, 1903.

JOHN GATLING.

Service of the above order of injunction acknowledged this Dec. 31, 1903.

WALTER GORMAN,
Att'y for H. P. Gorman, Adm'r.

(Endorsed:) Filed in my office Dec. 29, 1903. G. B. Mallory, Clerk.

13 In Chancery Court of St. Francis County

E. BONNER, Plaintiff,
vs.
M. E. WINSETT ET AL., Def'ts.

Demurrer to Complaint.

Come the defendants and demur to the complaint herein and for cause say:

1. That the facts stated in the plaintiff's complaint do not constitute a cause of action.

2. That the facts stated in the plaintiff's complaint are not sufficient to entitle plaintiff to equitable relief.

JOHN GATLING AND
WALTER GORMAN,
Attorneys for Defendants.

(Endorsed:) Filed in open court May 9. 1904. G. B. Mallory, Clerk.

14 *Order Overruling Demurrer.*

Chancery Court Record, St. Francis County.

May Term, Saturday, June 11, 1904.

E. BONNER, Plaintiff,
vs.
M. E. WINSETT ET AL., Def'ts.

Demurrer Overruled and 60 Days for Answer.

Come the parties by their respective solicitors, and demurrer heretofore filed in this cause coming on to be heard, the Court after hearing the argument of counsel doth overrule said demurrer, and the defendants are allowed sixty days within which to file their answer in this cause.

15 In the St. Francis Chancery Court, December Term, 1904.

E. BONNER, Plaintiff,
vs.
MRS. M. E. WINSETT, MRS. P. B. WILKINS, MRS. MAGGIE CHAPMAN, MRS. MATTIE BROOKS, MRS. W. E. JETT, MRS. IDA MCMILLEN, WILLIAM L. SELLERS, JOSEPH and MARY MOORE, CORNELIA MOORE, Heirs-at-law of Mary A. Cole's Estate, and HENRY P. GORMAN, Adm'r in Suc. of said Estate, Defendants.

Answer.

The defendants, Mrs. M. E. Winsett, and others above named, for their answer to the complaint of the plaintiff, E. Bonner, state:

That it is true as stated in the complaint that the said L. P. Featherstone qualified as administrator of the estate of Mary A. Cole, deceased, and filed his bond as such administrator in the Probate Court of St. Francis County, Arkansas on the 15 day of March, 1893 with the plaintiff, E. Bonner, W. E. Jett, T. B. Wilkins and W. H. Coffey as his sureties thereon all of whom are insolvent except the plaintiff, E. Bonner.

And that the defendants herein are the heirs at law of the said Mary A. Cole, deceased, and the interest to which each is entitled is correctly stated in the complaint.

The defendants state that it is not true as stated in the
16 complaint that the said L. P. Featherstone when he moved from Arkansas and took up his residence in Texas in 1895 was not indebted to the said estate a solitary cent but on the contrary he was indebted to said estate in a large amount.

That it is not true as alleged in the complaint that on January 29, 1900, when the Probate Court passed upon the exceptions to the settlement filed by the sureties of E. Bonner and W. H. Coffey for their principal L. P. Featherstone, as administrator, that the said Featherstone was not present either in person or by attorney and it is not true that the said court illegally charged the said Featherstone as administrator with $1000.00 for said residence property, and it is not true that the fact that the heirs of the said Mary A. Cole, deceased, had executed deeds for the residence property was concealed from the probate court when said settlement came up before it for consideration.

That it is not true that by illegally and unjustly charging said Featherstone with said residence property, as is alleged in the complaint, the probate court brought him out in debt to the said estate in the sum of $991.28 or in any other sum except what was justly due from him, the said Featherstone, as administrator, to said estate, and it is not true that said judgment of the probate court, in sustaining the exceptions to said settlement, was procured by fraud and therefore null and void.

The defendants further answering state that it is not true that the judgment obtained by administrator Gorman against said sureties Bonner and Coffey is unjust and inequitable, but on the contrary they allege that it is a just, equitable and valid judgment, and every cent thereof is justly due from the said administrator to said estate.

The defendants further answering allege the facts to be that in the settlement filed by E. Bonner and W. H. Coffey for their principal L. P. Featherstone as administrator July 19, 1899, they
17 charged him with the sum of $1152.00; received by him as the proceeds of sale of the store-house in Forrest City and the 33 acres of land. The defendants state that this amount is correct and is all that they have ever sought to charge him with in the way of sales from real estate, a copy of this settlement is herewith filed as Exhibit "A" to this answer.

The defendants further state that in their exceptions to said settlement which was filed in the Probate Court Oct. 30, 1899, they do

not except to said amount of $1152.00, proceeds of sale of real estate received by said administrator, but they did except to said settlement for the following reasons, to-wit:

First, because said Featherstone as administrator collected the sum of $180.00 from John M. Brown as rent of said store-house in Forrest City before it was sold by him and said sureties fail to charge him in said settlement.

Second, because said sureties failed to charge said administrator with any interest on the sum of $687.23 received by him from L. R. Grobmeyer as a part of the purchase money of said store-house in 1894.

Third, because said sureties in said settlement erroneously gave said Featherstone as administrator credit for the following amounts which are represented by Vouchers No. 1, 2, 3, 4, 8, and 11, said amounts being $125.00, $120.00, $72.50, $17.25, and $10.00.

Said defendants excepted to said Vouchers because they were not signed by any heir, legatee or creditor of the estate of said Mary A. Cole, deceased, and there was nothing to show that said amounts were paid in satisfaction of any just debts against said estate.

Fourth, they excepted to said settlement because said sureties gave said Featherstone as administrator credit for the following amounts which are represented by Vouchers Nos. 9, 7, 10, and 12, said amounts being as follows, to-wit: $3.00, $72.50, $33.50 and $8.00.

They objected to these Vouchers because, while they were
18 signed by the heirs at law of Mary A. Cole, deceased, they were given to said L. P. Featherstone individually, or intended to be given to him individually, for money which he collected from the sale of the residence property and with which he had never been charged as administrator.

5th. They excepted to said settlement because vouchers 6, 13 and 14 were not filed with said settlement. All of which will more fully appear by reference to said exceptions a copy of which is herewith filed as Exhibit "B" to this answer.

The defendants further state that it is not true that the said Featherstone or his said sureties were not present in court on the hearing of the said exceptions which were filed to the settlement which was filed by said sureties for the said Featherstone, either in person or by attorney, and defendants state that they were present by their attorney J. R. Beasley, which fact is shown by the judgment rendered by the probate court in sustaining said exceptions.

The defendants further state that it is a fact that the said L. P. Featherstone, while acting in the capacity of administrator of the estate of said Mary A. Cole, deceased, converted himself into a self-appointed agent for the purpose of selling said residence property and did sell the same to Mrs. E. C. Williams for the sum of $1000.00 and then procured the heirs at law of the said Mary A. Cole, deceased, to execute deeds to the said Mrs. E. C. Williams for their respective interests in the said property, except the interest of those heirs which he had already purchased himself, and taken the deed to in the name of his wife, Alice W. Featherstone. That upon the execution of these deeds to the said E. C. Williams for the said residence prop-

erty the $1000.00 purchase money thereof was turned over by the said E. C. Williams to the said L. P. Featherstone who delivered to her the deeds.

The defendants further state that when the said Featherstone had collected the said $1000.00 purchase money from the said
19 E. C. Williams for the residence property he turned it over to the heirs in small sums and partial payments, taking their receipts therefor, in some instances to himself as administrator, and these are the receipts which are filed by his said sureties as Vouchers in the settlement which they made for him and which was objected to by these defendants because they had no connection with the estate.

The defendants further answer that on the trial of said exceptance before the probate court this matter was fully discussed and the evidence showed to the court that Featherstone had collected $1000.00 from the sale of the residence, and what portion of it he had paid to the heirs he was now claiming credit by as administrator in this settlement which was filed for him by his sureties. And the Court, after hearing all of the testimony and considering the same, found that there was so much irregularity and confusion in the way in which the said Featherstone had kept his accounts with the said estate, that the easiest and best way to state the account with him would be to charge him with everything which he had received from said estate, including the $1000.00 which he received from the residence property, and to credit him with every thing he had paid out, including the purchase money from the residence property, which he had turned over to the heirs, and for which he was now asking credit. And the court proceeded and did state the accounts on this basis and found that the said Featherstone was indebted to said estate in the sum of $991.28, a copy of which judgment is herewith filed as Exhibit "C" to this answer.

The defendants further answer that, as will appear by said exceptions to said settlement, these defendants claim that the said Featherstone as administrator was indebted to said estate in the sum of $989.38, a difference of only $1.90 from the result at which the court arrived, while this statement is figured by leaving out altogether the proceeds of the residence property. Hence it is a fact that the said Featherstone at the time of the rendition of the judgment against him by the probate court was indebted to said estate in
20 the said sum of $991.28.

If the said Featherstone as administrator did not owe said estate as is alleged in the bill in this cause it is pertinent to ask what he has done with the $1073.38 which he collected as follows, to-wit: $687.23 from the sale of the 33 acres of land and a part of the sale of the store-house and interest thereon to the amount of $206.15, and the $180.00 which he collected from John M. Brown as rent for the storehouse.

It is a fact, and was established before the probate court at the time of the rendition of said judgment against said Featherstone, that nearly all of the vouchers that were filed by his said sureties in said settlement for him were receipts taken by him from the heirs for the purchase money paid by him from the residence property

and had nothing to do with said estate and was simply filed there to offset his indebtedness.

The said sureties attempted to take an appeal to the circuit court from said judgment of probate court but failed from neglect or carelessness to do so. And now, since suit has been brought against them for said amount and judgment rendered thereon by the circuit court, which judgment has been affirmed by the supreme court in the case of Bonner *et als. v.* Gorman, 77 S. W. p. 602, they now ask this court to perpetually enjoin the collection of this judgment, alleging as the only grounds therefor that the probate court in rendering said judgment illegally charged Featherstone with $1000.00 from the sale of the residence property, which is not true, because the court in doing so gave him credit by the purchase money thereof as represented in the vouchers which were filed by his sureties in said settlement and which left the same result as if said vouchers and said $1000.00 had been left out of the account altogether.

Wherefore the premises considered the defendants pray that this bill be dismissed and that they recover from the plaintiff and his sureties on his injunction bond all damages which they have
21 sustained by reason of the injunction in this cause and for all costs of this action.

JOHN GATLING,
WALTER GORMAN,
Attorneys for Defendants.

Separate Answer of Mrs. Winsett.

Comes M. E. Winsett and for her separate answer to the complaint in this cause states:

That she is a sister of the said Mary A. Cole, deceased, and is the owner of one half interest in said estate. That sometime after the death of her sister, Mary A. Cole, L. P. Featherstone sent her a deed to execute to Mrs. E. C. Williams for her one half interest in the residence of her said sister in Forrest City. That she executed said deed and returned the same to L. P. Featherstone, the consideration for her one half interest being $500.00; that out of said $500.00 the said L. P. Featherstone had only sent her the sum of $350.00 for which she sent him her receipt, which is made to said Featherstone, as administrator, and is in words and figures as follows, to-wit:

JUNE 26, 1894.

Received from L. P. Featherstone, Adm'r, three hundred and fifty dollars ($350.00) of the M. A. Cole Estate.
$350.00.
(Signed) M. E. WINSETT,
Per S. M. BIGHAM.

That she made receipt to said L. P. Featherstone as administrator because she thought at the time that he was acting as administrator in selling the property and collecting the purchase money. She further states that other than this said sum of $350.00 she has never

received from the said L. P. Featherstone, either as administrator or otherwise, one cent from the estate of her said sister M. A. Cole. That she is a resident of the county of Carroll, State of Tennessee, and has never visited St. Francis County, Ark., since the death of her dead sister.

Further answering the defendant says that she denies each
22 and every allegation in the complaint in which it is alleged that the said L. P. Featherson is not indebted as administrator to the estate of said Mary A. Cole, deceased. She says it is not true, as alleged in the complaint, that the probate court erroneously or wrongfully charged him with one thousand dollars the proceeds of said residence property, because it allowed him in the same statement credit by the receipts of the proceeds which he paid to the heirs. She states that it is a fact that while there has been only about $250.00 probated against the estate, and while the said Featherstone as administrator received the sum of $277.38 from the sale of the personal property as is shown by his sale bill and while he received the sum of $196 from the sale of the 33 acres of land and the sum of $491.23 from the sale of the storehouse and $180.00 rent of the storehouse from John M. Brown making a total of $1144.61 actually received by him according to his own report, and has never paid to this defendant a single cent, who is entitled to one half of the said estate after the payment of said small amount of debts.

Therefore the defendant prays the court that this bill be dismissed and that she recover her damages and costs.

JOHN GATLING,
For Mrs. M. E. WINSETT.

23 In St. Francis Chancery Court.

E. Bonner
vs.
M. E. Winsett et als.

Agreement.

We hereby agree that all or any part of the record and file of papers in the case of H. P. Gorman, Administrator, etc. *vs.* L. P. Featherstone, original administrator of Mary A. Cole's estate, may be used as evidence in the case of E. Bonner *vs.* M. E. Winsett, *et als.*, by filing certified copies of such parts thereof as either party may want.

March 23rd, 1905.

WILLIAMS & BEASLEY,
Attorneys for Plaintiff.
JOHN GATLING,
For Defendants.
WALTER GORMAN,
For Defendants.

(Endorsed:) Filed in my office on the 24th day of March, 1905. G. B. Mallory, Clerk. M. W. Seaborn, D. C.

24 DEPOSITION- FOR PLAINTIFF.

Deposition of J. R. Beasley.

The deposition of J. R. Beasley, taken on the 10th day of Dec., 1904, between the hours of 8 o'clock a. m. and 6 o'clock p. m., at the office of the clerk of the chancery court of St. Francis county, Arkansas, at Forrest City, to be read in evidence in the cause pending in the chancery court of said county, wherein E. Bonner is plaintiff and M. E. Winsett *et als.* are defendants.

Said witness, J. R. BEASLEY, being first duly sworn, deposed as follows:

Q. What is your name, age, occupation and place of residence?
A. J. R. Beasley, 62 years old, by profession, a lawyer, and reside at Forrest City, Arkansas.
Q. How long have you lived at Forrest City?
A. I came here from Tennessee on Mar. 20, 1899, and a few days afterwards formed a partnership with Mr. N. B. Fizer, a lawyer, and have lived here ever since.
Q. Were you acquainted with Mr. L. P. Featherstone?
A. No sir.
Q. Did you ever represent Featherstone in any settlement proceeding in the Probate Court of St. Francis County?
A. No sir.
Q. Did you represent E. Bonner and W. H. Coffey, two of the sureties of administrator L. P. Featherstone in a settlement proceeding in the Probate Court in Jan. 1900, in relation to the estate of Mary A. Cole, deceased?
A. Yes sir.
Q. How was it that you did not represent administrator Featherstone on that occasion also?
A. Because I had not been employed by him to do so and had no authority to appear as his Attorney.
Q. Did any one represent administrator Featherstone on that occasion in the Probate Court?
25 A. No sir.
Q. Was he present, or had he been summoned or cited to appear?
A. No sir.
Q. Where was he living at that time?
A. At Galveston, Texas, I believe.
Q. When were you employed to represent two of his sureties, Bonner and Coffey, in that settlement proceeding in the Probate Court?
A. It was only a few days, or perhaps a week, before the matter came up for consideration.
Q. Did you try to get ready for the trial so as to protect the rights of the sureties whom you represented?
A. I did, but some of the papers were lost or mislaid, and were

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not found until just before the trial, when it was too late for me to investigate and properly study the case.

Q. Did you know before the trial in the Probate Court that the heirs of Mrs. Cole had sold her residence property to Mrs. E. C. Williams and had executed deeds themselves to the purchaser?

A. No sir. I never heard of it before the trial and never heard of it during the trial. Nothing was said about the residence property in the final settlement filed by Mr. Fizer as attorney for said sureties in July, 1899, and it was not alleged in the exceptions to that settlement account that administrator Featherstone was justly indebted to the Cole estate in the sum of $1000.00 for said residence property, if I remember the pleadings correctly.

Q. It appears that Mr. Fizer signed the firm name of Fizer & Beasley to the settlement account filed by him for said sureties. Did he consult with you about it?

A. No sir. I think he was employed by said sureties before I came to Arkansas, and I knew but little about the matter and took no interest or part in it until some time after he quit the practice of law, which he did about the first of Dec. 1899.

26 Q. Did you consider yourself as an attorney for said sureties from the fact that Mr. Fizer had signed the firm name of Fizer & Beasley to said settlement account?

A. No sir. I do not think I ever saw that settlement account until after Mr. Fizer quit the practice of law and I was specially employed by Bonner and Coffey to look after their interests.

Q. Did you enter into any agreement with the attorneys on the other side in the Probate Court?

A. No sir.

Q. Did they ask you to do so?

A. Yes sir.

Q. What agreement did they want you to make with them?

A. My recollection is that they wanted me to consent, in Adm'r Featherstone's behalf, to let the Probate Judge take all the papers including the vouchers on file, the Settlement Account and Exceptions thereto, and the first Settlement, and state an account between Adm'r Featherstone and Mrs. Cole's estate, just as if the first Settlement had not been made.

Q. And you did not consent?

A. No sir. I told them I was not his attorney and had no authority to make any agreement or consent to anything in behalf of Adm'r Featherstone.

Q. Was anything said in the Probate Court about the deeds the heirs had made to Mrs. Williams?

A. Not a word in my presence.

Q. Did you know those deeds were on the books in the Recorder's Office at that time?

A. No sir.

Q. How long was it after the trial in the Probate Court before you found out?

A. I think it was about a week.

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Q. When the settlement proceeding was pending in the
27 Probate Court did either of the attorneys on the other side know that the deeds executed by the heirs were then on record?

A. Yes sir.

Q. How do you know either of them knew it?

A. Because one of them admitted it in answer to a direct question from me in the court house since this equity suit was brought.

Q. Did the Probate Court know, in Jan. 1900, when said settlement proceeding was pending, that the heirs of Mrs. Cole had sold her residence property and executed deeds to the purchaser acknowledging therein the receipt of the purchase money?

A. I can not say whether the Probate Court knew this fact at that time or not. But I do know that I did not hear any intimation or mention of it on that occasion, and that subsequently I was surprised to find the deeds executed by the heirs on record in the Recorder's Office.

Q. After you made this discovery what did you do?

A. I told Mr. Bonner and Judge Coffey about it at once, and I wrote a letter to administrator L. P. Featherstone and urged him to take an appeal to the circuit court for the protection of his sureties.

Q. Did he authorize you to take an appeal for him?

A. In his letter, in reply to mine, he authorized me to do so, and on Feb. 16, 1900, he filed an affidavit for appeal in the usual form, but the appeal was dismissed at the March term, 1901, of the circuit court on motion of the other side on the ground that no order had been entered in the Probate Court granting the appeal.

Q. Did administrator Featherstone ever sell the residence property of Mrs. Mary A. Cole, deceased, under an order of the Probate Court?

A. No sir.

Q. What real estate of hers did he sell as administrator?

A. He sold a storehouse in town to Grobmeyer for $956.00
28 and 32 acres of land to Taylor and Fussell for $196.00, making a total of $1152.00.

Q. Was this amount debited to him in the settlement account filed by two of his sureties in July, 1899?

A. Yes sir.

Q. Were the credits claimed in that settlement account allowed by the Probate Court or not?

A. I do not remember any which were not, and I think a careful comparison of said account with the order of the court will show that all or nearly all of said credits were allowed.

Q. What was the aggregate amount of the credits claimed?

A. $1175.57.

Q. Did the sureties ask in that settlement account that administrator Featherstone be credited with $350.00 for the money which he sent to Mrs. Winsett and for which she gave him her receipt?

A. No sir.

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Q. Were vouchers filed in support of the credits claimed in said account?

A. Yes sir.

Q. Was any appeal taken from the action of the court in allowing said credits?

A. No sir.

Q. Please examine the "Inventory, Certificate and Affidavit in matter of the estate of Mary A. Cole, deceased," filed by H. P. Gorman, administrator in Suc., Jan. 18th, 1897, and state what property he says had gone into his hands up to that time?

A. "Cash from L. R. Grobmeyer, note $464.77."

Q. Was that inventory sworn to?

A. Yes sir.

Q. How many notes were given by Grobmeyer for the storehouse in Forrest City?

A. My understanding is that he gave two, each of which was for $478.00.

29 Q. If Grobmeyer made a payment to any creditor of Mrs. Cole's Estate, state who it was and what amount?

A. In their exceptions to the settlement account of July, 1899, the exceptors say that Administrator Featherstone was entitled to credit:

By amount paid I. H. Lutz....Voucher No. 5..... $40.00
By amount paid I. H. Lutz, by Grobmeyer..... $44.00

Q. Was any credit claimed for administrator Featherstone in said settlement account of July 1899, for the $44.00 paid by Grobmeyer to Lutz?

A. No sir. It seems to have been forgotten or unknown to Mr. Fizer at the time he prepared said settlement.

Q. Was the $44.00 paid by Grobmeyer to Lutz allowed as a credit to Administrator Featherstone by the Probate Court in settlement of Jan. 29th, 1900?

A. Yes sir.

And further this deponent sayeth not.

J. R. BEASLEY.

STATE OF ARKANSAS, *County of St. Francis:*

I, George B. Mallory, Clerk of the chancery court of St. Francis County, do hereby certify that the foregoing deposition of J. R. Beasley was taken before me, and was read to and subscribed by him in my presence at the time and place and in the action mentioned in the caption, the said Beasley having been first sworn by me that the evidence he should give in the action should be the truth, the whole truth, and nothing but the truth, and that his statements were reduced to writing by him in my presence, neither party being present at the examination, and no attorney except the witness himself.

Given under my hand this the 10th day of December, 1904.

G. B. MALLORY, *Clerk.*
By M. W. SEABONE, *D. Clerk.*

3—348

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30 *Deposition of L. P. Featherstone.*

Deposition of L. P. Featherstone, Taken at Galveston, Texas, Aug. 21 & 22, 1900.

The deposition of L. P. Featherstone in the probate court case of H. P. Gorman, administrator in suc. estate of Mary A. Cole, deceased, *vs.* L. P. Featherstone, former adm'r est. of Mary A. Cole, dec'd, pending by appeal in the circuit court of St. Francis county, Arkansas, taken on the 21st and 22nd days of August, 1900, at the office of W. B. Kinkead, notary public, on Tremont St., between Church and Post Office Sts. in the city of Galveston, Texas, between the hours of 8 o'clock a. m. and 6 o'clock p. m., to be read as evidence in said cause in the circuit court of St. Francis county, Arkansas.

Said witness L. P. FEATHERSTONE being first duly sworn testified as follows in answer to the interrogatories filed in this cause:

Q. What is your name, age, occupation and place of residence?

A. My name is L. P. Featherstone, age forty-nine, occupation railroad official; place of residence, Galveston.

Q. Were you the former administrator of the estate of Mary A. Cole, deceased, in St. Francis County, Arkansas?

A. I was the administrator of the estate of Mary A. Cole, deceased, in St. Francis County, Arkansas.

Q. In your report of sale of real estate filed Jan. 15th, 1894, you say to the probate court of said county: "Your administrator found that the payment of the debts probated against the estate did not require him to sell the residence of his intestate, to-wit: lots 5 and 6 in Block II, in the town of Forrest City, and before the day of sale the said residence property was disposed of by the heirs." Now please state to whom the purchase price of said residence property was paid, to you or to the heirs themselves, and if to you did you turn it over to them or not? State all the facts fully.

A. The residence or homestead property was sold to Mrs. Eddie C. Williams by the heirs. The purchase price was paid to the
31 heirs, some of them directly and to some of them through me as their agent. The papers were not signed by most of them until they had already been paid. Sheriff W. E. Williams, who was representing his wife, the purchaser, looked after the details in this matter and saw to the signatures being correct and to satisfactory settlements being made with all the parties.

Q. It appears from your first settlement, filed Jan. 26th, 1894, which was confirmed, that the estate owed you at that time $54.00, and also owed probated claims amounting to $246.42 more. It also appears from your report of sale of real estate filed in the probate court that on Feb. 17th, 1894, you sold lot 21 in block 16 in Forrest City, to Grobmeyer for $956.00, and that you sold 32 acres of land, the north part of section 36, T. 5 N. R. 3 East, to Taylor and Fussell

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for $196.00, being a total of $1152.00, for which the purchasers gave their notes. It further appears that $464.77 of the purchase price of this land was paid to Administrator Gorman by Grobmeyer and $44.90 more was paid by the latter to I. H. Lutz, by order of the court, on funeral expenses, and after deducting the $54.00 due to you at the time of your first settlement there is left in your hands as administrator $643.23 of the amount for which said land was so sold. Now as against this debt of $643.23 what credits, as administrator are you entitled to in the settlement of your account and for which you did not receive credit in your first settlement? (In answering this question please avoid confusing your account as administrator with any private transaction of yours in relation to the residence property.)

A. In answer to interrogatory 4, I will simply answer the question as you put it. I was of the impression that I was entitled to a credit of $154.76, instead of $54.76 as you state. But coming to your last figures of $643.23 as balance against me, I herewith state the amount for which I am entitled to credit:

Amount paid Lutz			$40.00
Amount paid Mrs. M. E. Winsett			350.00
32 Amount paid to Lola B. Jett	$177.50		
Less amount paid to her a/c Homestead		72.50	105.00
Amount paid Hugh Sellers			28.25
Amount paid Mrs. McMillen			25.00
Amount paid Susan J. Farley		89.00	
Amount paid Susan J. Farley		36.00	125.00
Amount paid Mattie D. Brooks			120.00
Amount paid Louisa J. Wilkins		14.00	
" " " " "		106.00	120.00
Amount paid W. P. Brandon a/c of the heirs			125.00
Amount paid C. F. Hinton		25.00	
" " " " "		10.00	35.00
			$1073.75.

Q. 5. It appears from voucher No. 14 that you settled as administrator with John M. Brown for his twelve and one half months' rent amounting to $187.50. It also appears from this voucher that in settling with Brown you allowed him credit for Mrs. M. A. Cole's account, $7.80; for building awning $19.00; for repairing roof $5.75, and for cash to I. H. Lutz $5.10—Total $37.65. Were these just charges against your intestate's estate, and are you entitled to this credit of $37.65 in relation to this rent matter?

A. These charges were just as against the intestate's estate, and I am entitled to credit for the $37.65.

Q. 6. If you are justly entitled to this credit of $37.65 then you are chargeable with only $149.85 on account of the rent received for storehouse, which amount, added to the $643.23 before mentioned received by you from sale of lands, makes a total of $793.08. Now,

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as against this debit what is the aggregate amount of credits to which you are entitled as administrator, not including any credit which you received in your first settlement and not forgetting your commission of 10 per cent.?

A. My answer to the 4th interrogatory answers the sixth.
33 Except my commission should be added thereto which I calculate to be $128.96. This, added to the foregoing sum as stated in answer to 4th interrogatory makes a total for which I am entitled to credit of $1202.21.

Q. 7. In your answer to the 4th interrogatory did you make an itemized statement of the credits to which you are entitled as administrator, and show the nature and amount of each credit? If you did not will you do it now?

A. I made an itemized statement of the credits to which I am entitled but am sure that I made payments and obtained vouchers which have been lost or mislaid.

Q. 8. Please examine the order of the probate court of Jan. 29th, 1900, and make any comment on it you wish to make.

A. My first objection to the order of the Probate Court of Jan. 29th. is that I am charged with $1000.00 on account of the homestead sold to Eddie C. Williams by the heirs, which should not be charged to me, it having been sold by the heirs and not by me as administrator. The further objection is, that I am charged with interest to the amount of $206.15. This is wholly wrong. I never, at any time, had in my possession as much as $200.00 for thirty days at a time. The legatees were always in need of the funds, and were always ahead of my receipts in their collections. I see that H. P. Gorman is reported to have collected $464.77 from L. P. Grobmeyer. This amount if my recollection is correct, should have been one half of $956.00, which would have been $478.00.

Q. 9. It appears that as guardian you conveyed the interest of one of the minor heirs, and that as purchasers you and your wife conveyed the interest of Farley and wife, and Wilkins and wife, in said residence property to Mrs. E. C. Williams. Now if you acted as agent for any of the heirs, in collecting the amounts due to them from the purchaser of said residence property, you may state for whom you acted, what amount you collected, and what amount you turned over to the parties entitled thereto.

A. I was acting as agent for some of the heirs in the sale
34 of the homestead, and, in order to close up the matter and accommodate the legatees, I caused my wife to buy and pay for the interest of Farley and wife and Wilkins and wife. I was guardian for young Sellers. I think I also represented Brooks and wife. The money derived from the sale was paid over to those I represented either before or immediately after the consummation of the sale, either paid directly to them or to those that they had authorized and empowered to collect the same. In some instances these payments were made to merchants there to whom the legatees were indebted.

Q. 10. Do you wish to state anything further that is pertinent to this cause, if so do it now.

A. I wish to state that in a general way I know that the estate was in debt to me from the day I took charge of it until I left Arkansas. My business here has been so urgent that I have not been able to return to secure full data, and the statement which I now supply does not give me credit for all the payments made by me.

L. P. FEATHERSTON.

"Cross-Interrogatories"

Filed by the clerk of the circuit court of St. Francis county, Arkansas, under Sec. 2999 of the Digest, to be propounded by the same notary public, at the same time and place, to L. P. Featherston, the before mentioned defendant, at the office of W. B. Kinkead, notary public, Galveston, Texas, Aug. 21, 1900.

First. Are you directly or indirectly interested in this action? And, if interested, explain the interest you have.

A. The style of the case explains my interest in the case, as it is a suit against my bondsmen.

2. Are all your statements in the foregoing answers made from your own personal knowledge? And if not, do your answers show what are made from your personal knowledge, and what from information, and the source of that information?

35 A. My statements are from my own personal knowledge except where my answers show that they are from information, and the source of that information.

3. State everything you know concerning the subject of this action favorable to either party.

A. I believe I have nothing further to say.

L. P. FEATHERSTON.

36 *Administrator L. P. Featherston's Report.*

In St. Francis Probate Court.

L. P. FEATHERSTON, as Adm'r of the Estate of Mary A. Cole, Deceased.

L. P. Featherston as the administrator of the estate of *the estate of* Mary A. Cole, deceased, would respectfully represent to the court that pursuant to the order of this court made on the 7th day of Nov. 1893, he proceeded to advertise the real estate belonging to said deceased by posting ten written notices in as many public places in St. Francis County twenty days before the day of sale, and on the 16th day of Dec. 1893, — pursuance to the notice thus given he offered said land at the Court House door in Forrest City, St. Francis County, Arkansas, to the highest and best bidder, first having had said land appraised by three disinterested house-holders of said county; and at such sale D. M. Wilson became the highest and best bidder and purchaser of Lot 21 in Block 16 in the town of

Forrest City for the sum of $700.00 which is more than two thirds of the appraised value of the same, which sum he paid in cash in preference to giving his note and security.

That James Fussell and Geo. P. Taylor became the highest and best bidder of part of the north part of Section 36 T. 5 N. R. 3 East in St. Francis County, Arkansas, 33 acres, for the sum of $200.00, more than two thirds of the appraised value of the same, of which they paid one third cash and executed their note for the remaining two thirds, with security which was approved by me.

Your administrator found that the payment of the debts probated against the estate did not require him to sell the residence of his intestate, to-wit: Lots 5 and 6 in Block 11 in the town of Forrest City, and before the day of sale the said residence property was disposed of by the heirs.

Your administrator asks that this sale be by the court confirmed.

L. P. FEATHERSTON, *Adm'r.*

37 L. P. Featherston, on his oath says, that he was not the purchaser of the lands and tenements above reported sold, or any part thereof, and that they were not purchased for his use, and that he is not in any manner interested in the purchase thereof.

L. P. FEATHERSTON.

Subscribed and sworn to before me this 15th day of Jan. 1894.

F. LAUGHINGHOUSE, *Clerk.*

Adm'r L. P. Featherston's Report Confirmed.

(Endorsed:) Filed Jan. 15, 1894, F. Laughinghouse, Clerk. Examined and approved this Jan. 15, 1894. C. F. Hinton, County Judge.

STATE OF ARKANSAS, *St. Francis County:*

I, T. C. Merwin, Clerk of the Probate Court of St. Francis County Arkansas, hereby certify that the foregoing is a true and perfect copy of a Report of Sale of Real Estate filed by L. P. Featherston, Adm'r &c. as the same appears from the record in my office.

Witness my hand this the 7th day of April, 1905.

T. C. MERWIN, *Clerk.*

(Endorsed:) Filed in my office this the 8th day of Apr'l 1905. G. B. Mallory, Clerk, by M. W. Seaborn, D. C.

38 *Claims Filed & Allowed Against the Estate of Mary A. Cole, Dec'd.*

List of Claims Filed and Allowed Against Mary A. Cole's Estate.

	Filed.	Allowed.	Class.	Am't.
L 126 I. H. Lutz.....	Sept. 17, 1893	Apr. 8, 1893	1	$84.00
L 187 R. E. Hinton.....	Jan. 16, 1894	Jan. 18, 1894	4	34.20
L 187 J. W. Beck & Co....	Jan. 16, 1894	Jan. 18, 1894	4	3.15
L 187 John M. Brown....	Jan. 16, 1894	Jan. 18, 1894	4	7.80
L Wynne, Love & Co.....	Jan. 16, 1894	Jan. 18, 1894	4	25.27
L 193 W. E. Jett.....	Jan. 16, 1894	Jan. 28, 1894	1	92.00
L 214 Landvoight & V....	Ma'ch 10, 1894	Apr. 16, 1894	4	3.50
				$249.92

STATE OF ARKANSAS, *St. Francis County:*

I, T. C. Merwin, Clerk of the Probate Court of St. Francis County, Ark., do hereby certify that the foregoing is a full, true and perfect list of the claims filed in my office against the estate of Mary A. Cole, deceased, and allowed by the Probate Court of said County, as the same appears on page 149 of the claim book now in my office.

Witness my hand this the 28th day of March, 1905.

T. C. MERWIN, *Clerk.*

(Endorsed:) Filed in my office the 30th day of March, 1905. G. B. Mallory, Clerk.

39 *Adm'r Featherston's First Settlement.*

In the St. Francis Probate Court, Jan. Term.

In re Estate of MARY A. COLE, Deceased,

vs.

ADMINISTRATOR'S ACCOUNT.

First Settlement.

To the Hon. C. F. Hinton, Judge of the Probate Court of St. Francis County:

The undersigned, as administrator of the estate of Mary A. Cole, deceased, asks leave to submit the following as his first annual settlement:

He charges himself with the amount of the appraisement $180.65	$180.00
To difference between appraisement and sale bill to-wit: $97.38	$97.38
Total debits	$277.38

He asks to be allowed to take credit by the following to-wit:

By amounts paid out in discharge of the indebtedness of said estate not probated, a list of which is herewith filed and the receipts of the parties to whom paid marked Voucher No. 1	$164.76
By Commissions on $164.76 at 10 per cent	16.47
Total credits	$181.23

From the foregoing it would appear that there is in the hands of this administrator the sum of ninety-six and 23/100 dollars, but he states that at the sale the following persons, to-wit: Mrs. J. L. Farley, H. S. Sellers, Mrs. W. E. Jett, Mrs. P. B. Wilkins, all of whom are heirs of the said Mary A. Cole, deceased, the parties above named bought property at the sale amounting to the sum of $161.15 and they ask that the said sum be charged to them according to the sale bill and that the court allow the administrator to take credit by that amount as having been paid to the heirs upon the presentation of their several receipts for the same.

40 If the court allows the said heirs to receive the said amount of $161.15, and gives the administrator credit by this Voucher No. 1 to Featherston's first settlement,

Vouchers to L. P. Featherston's First Settlement.

FORREST CITY, ARK., *Jan. 16th*, 1893.

Estate Mary A. Cole, Deceased, in a/c with L. P. Featherston.

To a/c Paid Drs. Stewart & Bishop	$69.00
To a/c paid Dr. Alley	14.00
To a/c paid E. L. Vadakin	2.50
To a/c paid W. N. Aldridge	6.00
To a/c paid Jack Allen, appraiser	1.00
To a/c paid Lewis Thomas	1.00
To a/c D. M. Wilson, Clerk	1.50
To a/c paid Taxes	26.21
To a/c Cost p'd W. E. Williams	2.25
To a/c Insurance	7.50
To a/c costs P. D. Boyle's Court	23.80
	$154.76

41 then it will appear from the foregoing statement that he has paid out $64.92 more than has come to his hands as administrator.

He states further that there has been probated against the said estate debts amounting to the sum of $246.42.

From the foregoing it is apparent that the personal property will not be sufficient to pay the debts against said estate.

This administrator says that Mary A. Cole, deceased, was the owner and seized of the following real estate, to-wit: Lot 21, in

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Block 16 in the Town of Forrest City and part of the north part of section 36, in Township 5 North Range 3 East, containing 32 and 83/100 acres all in St. Francis County Arkansas.

Wherefore he prays that the court will make an order authorizing him to advertise the said land for sale and to sell the same according to the order of the court to the end that the debts of the estate may be paid, and he states that there is no personal property except as herein stated that can come to his hands. And as in duty bound he will ever pray.

L. P. FEATHERSTONE.

Subscribed and sworn to before me this the 26th day of Jan. 1894.
F. LAUGHINGHOUSE, *Clerk.*

Endorsed: "Filed in open court Jan. 26, 1894, F. Laughinghouse, clerk." Examined and ordered to lie over for confirmation. The sale of land granted, as will be shown in order. This Jan. 26, 1894. C. F. Hinton, — Probate Court." "Settlement confirmed Apr. 30, 1894. C. F. Hinton, Probate Judge."

STATE OF ARKANSAS, *St. Francis County:*

I, T. C. Merwin, clerk of the probate court of St. Francis County, Arkansas, do hereby certify that the foregoing is a true, perfect and complete copy of administrator, L. P. Featherston's first
42 annual settlement and his petition to sell real estate of Mary A. Cole, deceased, together with the endorsements on the back thereof, as the same appears from the papers now on file in my office.

Witness my hand this the 9th day of Dec. 1904.
T. C. MERWIN, *Clerk.*

43 *1st Report of Adm'r Gorman, Adm'r in Succession.*

COUNTY OF ST. FRANCIS, *State of Arkansas:*

To Hon. J. S. R. Cowan, Pro. Judge:

In the matter of the estate of Mary A. Cole, deceased, you- petitioner would beg leave to submit the following statement: All of the papers in this case having been lost during the term of the former administrator, I have nothing to guide me as to claims allowed except the claim docket, and on this I find the following claims allowed in 1893 and 1894:

I. H. Lutz	$84.00
R. E. Hinton	34.20
J. W. Beck & Co.	3.15
Jno. M. Brown	7.80
Wynne, Love & Co.	25.27
W. E. Jett	92.00
Landvoight & Vadakin	3.50
	$249.92

CLOSE IN CENTER

On investigation I find that two of these claims (I. H. Lutz $84.00) and W. E. Jett ($92.00) have been paid, but the others appear to have been left unsettled.

The estate has more than enough funds to pay off everything that has appeared so far, and I respectfully ask for instruction in the matter.

Aug. 23rd, 1897. H. P. GORMAN, *Adm'r.*

(Endorsed:) Filed Aug. 23rd, 1897. G. B. Mallory, Clerk, by T. C. Merwin, D. C.

Petition examined and administrator instructed to pay claims as probated.

Sept. 3rd, 1897. JNO. S. R. COWAN, *Pro. Judge.*

44 *Adm'r Gorman's First Settlement.*

In St. Francis Probate Court, Jan. Term, 1898.

In re Estate of MARY A. COLE, Deceased—H. P. GORMAN, Administrator.

First Settlement.

To the Honorable John S. R. Cowan, Judge:

Comes the undersigned, as administrator of the estate of Mary A. Cole, deceased, and submits as his first annual report in this behalf the following, to-wit:

He charges himself as follows: Am't received from L. R. Grobmeyer being last payment on storehouse $464.77.

And he asks the following credits:

By W. E. Williams, sheriff	V. 1	.80
By T. C. Folbre, clerk	V. 2	4.70
By R. J. Williams & N. W. Norton	V. 3	30.35
By J. B. Beck & Co.	V. 4	3.65
By Wynne, Love & Co.	V. 5	29.32
By F. Laughinghouse	V. 6	12.00
By R. E. Hinton	V. 7	41.37
By Tax receipts	V. 8	8.05
By G. B. Mallory	V. 9	6.50
By Landvoight & Vadakin for notice	V. 10	1.00
By Com.		13.77
		$151.51
Balance due estate		313.26
		$464.77

Feb. 1st, 1898.

Respectfully submitted. H. P. GORMAN, *Adm'r.*

(Endorsed:) Filed in my office Feb. 1st, 1898. Approved Oct. 24th, 1898.

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45 *Adm'r Gorman's Second Settlement.*

In St. Francis Probate Court, Oct. Term, 1901.

Estate of MARY A. COLE, Deceased—H. P. GORMAN, Administrator.

Second Settlement.

Comes H. P. Gorman, administrator in Suc. of the estate of Mary A. Cole, deceased, and presents to the court this his second settlement as such administrator charging himself as follows:

To balance as per settlement, first July 18th, 1898.

Balance on hand first settelement			$313.26
Amount collected from James Fussell			335.25
			$648.51

And asks credit as follows:

Forrest City Times, publishing settlement	V. 1		1.00
Tax 1898	V. 2		6.00
P'd G. B. Mallory, Clerk	V. 3		6.35
P'd Walter Gorman, attorney's fee	V. 4		48.75
" " " "	V. 5		25.10
P'd Tax 1899	V. 6		10.00
P'd Tax 1900	V. 7		10.00
G. B. Mallory, clerk	V. 8		6.50
			$114.00
Commission			11.40

Balance on hand $523.11.

As this estate has no income and it is in litigation I have not considered it important to file annual settlements.

Respectfully submitted, H. P. GORMAN, *Adm'r.*

Examined and approved and ordered of record June 2nd, 1902.

B. D. HATCHER, *Judge.*

Attest:

T. C. MERWIN, *Clerk.*

46 STATE OF ARKANSAS, *St. Francis County:*

I, T. C. Merwin clerk of probate court of St. Francis County, Ark., do hereby certify that the foregoing is a true copy of the 2nd settlement of H. P. Gorman, Adm'r of the estate of Mary A. Cole, deceased, as the same appears from the record in my office.

Witness my hand this the 29th day of March, 1905.

T. C. MERWIN, *Clerk.*

(Endorsed:) Filed in my office March 30th, 1905. G. B. Mallory, Clerk.

CLOSE IN CENTER

47 *Adm'r Gorman's Third Settlement.*

In St. Francis Probate Court.

FORREST CITY, ARKANSAS, *July* 21, 1903.

Honorable T. C. Folbre, Judge:

I herewith submit my third statement as administrator in Suc. of the M. A. Cole Estate.

Balance on hand last settlement..... $523.11

Credits.

P'd the "Times"	V. 1....	$1.00
P'd Taxes for 1901	V. 2....	13.39
Paid the Times for brief	V. 3....	7.00
P'd T. C. Merwin fees	V. 4....	3.60
P'd Taxes for 1902	V. 5....	12.50
Commissions on $37.49		3.74
Balance on hand		481.88
		$523.11

Respectfully,

H. B. GORMAN,
Administrator.

Passed for publication, July 29th, 1903.

T. C. FOLBRE, *Judge.*

Examined and approved and oredred of record.

T. C. FOLBRE, *Judge.*

Duly recorded on June 25th, 1904.

T. C. MERWIN, *Clerk,*
By M. W. SEABORN, *D. C.*

STATE OF ARKANSAS, *St. Francis County:*

I, T. C. Merwin clerk of probate court of St. Francis County, Ark., do hereby certify that the foregoing is a true copy of the third settlement of H. P. Gorman, administrator in Suc. estate of Mary A. Cole, deceased, as the same appears from the record in my office.

Witness my hand this 19th day of March, 1905.

T. C. MERWIN, *Clerk.*

(Endorsed:) Filed in my office the 30th day of March, 1905. G. B. Mallory, Clerk.

COPY BOUND

48 *Final Settlement of L. P. Featherston.*

In St. Francis Probate Court.

In re Estate of MARY A. COLE, Deceased, by E. BONNER and W. H. COFFEY, as Sureties on the Bond of L. P. Featherstone, the Former Administrator.

Statement for Final Settlement.

To the Honorable George P. Taylor, Judge:

The undersigned, as sureties on the bond of L. P. Featherstone, formerly administrator of the estate of Mary A. Cole, deceased, in obedience to an order heretofore made by your honorable court, and served on us by the sheriff of St. Francis County, on the 18th day of March, 1899, would respectfully present the following:

As shown by his last settlement the said L. P. Featherstone had prior to the sale of the real estate belonging to said estate paid out the sum of $64.92 more than had come into his hands. As shown by his report of sale he sold land belonging to said estate amounting in the aggregate to the sum of $1152.00, taking notes therefor. As shown by vouchers in the hands of Mr. L. R. Grobmeyer, the purchaser of the larger part of said land, a large part of said sum of $1152.00 was not collected by Mr. Featherstone but was paid to the administrator in Suc., Mr. H. P. Gorman. At least one note amounting in principal to $478.00 was so paid. Of the amount actually collected by Mr. Featherstone the whole, or very nearly the whole, has, as will be shown by vouchers filed herewith, been paid out to creditors of or claimants or distributees of the estate.

The premises considered they ask that the following statement of the account of the said L. P. Featherstone be approved and confirmed and that the undersigned be discharged from liability as sureties on his said bond, to-wit:

49 *Statement of Final Settlement of Adm'r Featherstone's Account.*

DEBITS.

To proceeds of real estate, per report of sale	$1152.00

CREDITS.

By balance, as per settlement	$64.92
By Voucher No. 1	125.00
By Voucher No. 2	120.00
By Voucher No. 3	72.50
By Voucher No. 4	25.00
By Voucher No. 5	40.00
By Voucher No. 6	7.50

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By Voucher No. 7	72.50
By Voucher No. 8	17.25
By Voucher No. 9	3.00
By Voucher No. 10	33.50
By Voucher No. 11	10.00
By Voucher No. 12	8.00
By Voucher No. 13	17.25
By Voucher No. 14	13.75
By Voucher No. 15	
By 2nd Grobmeyer note paid to Gorman	478.00
By commission on $674.00	67.40
Balance	$1175.57

Which shows that there is a balance due the said L. P. Featherston, as former administrator, of $23.57.

Respectfully submitted,

E. BONNER,
W. H. COFFEY,
By FIZER & BEASLEY, *Att'ys.*

50 STATE OF ARKANSAS, *County of St. Francis.*

I, T. C. Merwin, clerk of the probate court of St. Francis County, Arkansas, do hereby certify that the foregoing is a full, true and perfect copy of the "Statement for Final Settlement" of account of L. P. Featherston, Administrator, which was filed in my office July 19, 1899, as the same appears from the Vouchers filed with the last settlement of L. P. Featherstone, made by his bondsmen July 19, 1899.

Vouchers Filed with Last Settlement of Adm'r Featherston.

Copy of Voucher No. 1.

$125.00 FORREST CITY, ARK., *April* 19, 1894.

Received of L. P. Featherstone one hundred and twenty-five dollars on a/c interest in house and lot purchased by Grobmeyer of Cole Estate.

(Signed) W. P. BRANDON, *Ex.*

Copy of Voucher No. 2.

$120.00 FORREST CITY, ARK., *June 5th*, 1893.

On or before the 15th day of June I promise to pay to W. S. and Mattie D. Brooks one hundred and twenty dollars.

(Signed) L. P. FEATHERSTONE.

Paid to F. G. & Co.

These notes given for purchase money of Cole estate interest.

Copy of Voucher No. 3.

Received of L. P. Featherstone as administrator of the estate Mary A. Cole seventy-two 50/100 dollars for a/c of Alfred Chapman and Maggie Chapman.

(Signed) FUSSELL, GRAHAM & CO.

June 12th, 1893.

51 Copy of Voucher No. 4.

DEC. 23, 1893.

Received of L. P. Featherstone twenty-five dollars on amount due from M. A. Cole estate.

$25.00. (Signed) C. F. HINTON.

Voucher No. 5.

$40.00.

Received of L. P. Featherstone forty dollars on a/c estate Mrs. Mary A. Cole.

(Signed) I. H. LUTZ.

Forrest City, May 2nd, 1894.

Copy of Voucher No. 6.

Printer's bill for advertising sale of land.

Copy of Voucher No. 7.

Received of L. P. Featherstone, administrator of the estate of Mary A. Cole, seventy-two 50/100 dollars in partial payment for our interest as heirs in and to the aforesaid estate of Mary A. Cole.

(Signed) W. E. JETT.
(Signed) LOLA B. JETT.

Forrest City, Ark., Dec. 4th, 1893.

Copy of Voucher No. 8.

$17.25. FORREST CITY, ARK., *April 8th*, 1893.

On or before the 8th day of Nov. we or either of us promise to pay to L. P. Featherstone as administrator of the estate of Mary A. Cole, deceased, seventeen 25/100 dollars, with interest at ten per cent. from date until paid, for value rec'd.

(Signed) HUGH SELLERS.
(Signed) P. L. LYON.

52 Copy of Voucher No. 9.

$3.00.

Rec'd of L. P. Featherstone three dollars on a/c my interest in the estate of the late Mary A. Cole.

(Signed) HUGH SELLERS.

Forrest City, June 10, 1893.

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Copy of Voucher No. 10.

$33.50.

Rec'd of L. P. Featherstone $33.50, thirty three dollars and fifty cts., on account of our interest in the estate of the late Mary A. Cole.

(Signed) W. E. JETT.
(Signed) LOLA B. JETT.

Copy of Voucher No. 11.

FORREST CITY, ARK., *M'ch 4th*, 1887.

Mrs. M. A. Cole

Bought of C. F. Hinton.

To 287½ lbs. White Lead 6	$17.25
" 28 Gals. Linseed Oil 44	12.32
" ½ lb. Blue Ultramarine	.25
" 5 lbs. Putty	.30
	$30.22
Fr't	2.00
	$32.22
Rec'd	10.00

(Signed) C. F. HINTON.

Copy of Voucher No. 12.

$8.00

Rec'd of L. P. Featherstone eight dollars on a/c of W. J. Dillon by verbal order.

(Signed) HUGH SELLERS.

Dec. 4th, 1893.

53 Copy of Voucher No. 13.

$17.25 FORREST CITY, ARK., *April* 8, 1893.

On or before the 8th day of November next we or either of us promise to pay to L. P. Featherstone, as the adm'r of the estate of Mary A. Cole, seventeen and 25/100 — ($17.25), with interest at ten per cent. from date.

HUGH SELLERS.
P. L. LYON.

Copy of Voucher No. 14.

FORREST CITY, *Feb. 17th*, 1894.

M. A. Cole Estate in Account with John M. Brown, Dealer in Stoves, Tinware, etc., Roofing and Guttering *and* Specialty.

April	8.	To cash	$19.30
		To M. A. Cole acc't	7.80
		To building awning	19.00
May	13.	To repairing roof	5.75
Sept.	1.	To Cash	7.80
Oct.	1.	To Cash	8.30
Nov.	1.	To Cash	30.40
Dec.	1.	To Cash	.65
1894.			
Jan.	1.	To Cash	4.05
Feb.	1.	To Cash	16.35
March	1.	To Cash	17.55
April	1.	To Cash	31.70
April	1.	To I. H. Lutz	5.10
			$173.75

CREDITS.

Feb.	17.	By 12½ months' rent at $15.00	$187.50
54		Received $5.00 April 25th, 1894.	
		Paid	$13.75

STATE OF ARKANSAS, *St. Francis County:*

I, T. C. Merwin, Clerk of the Probate Court of St. Francis County, Ark., do hereby certify that the vouchers attached hereto and numbered from one to fourteen inclusive are true and perfect copies of the vouchers filed with the last Settlement of L. P. Featherstone, adm'r of the estate of Mary A. Cole, deceased, as the same appears from the record in my office.

Witness my hand this the 1st day of April, 1905.

T. C. MERWIN, *Clerk.*

(Endorsed:) Filed in my office April 1, 1905. G. B. Mallory, Clerk, by M. W. Seaborn, Deputy Clerk.

55 *Probate Court Order.*

Probate Court, January 29, 1900.

H. P. GORMAN, Adm'r in Succession of the Estate of Mary A. Cole, Deceased.

L. P. Featherstone Ordered to Pay Over.

On this day comes E. Bonner and W. H. Coffey sureties, and L. P. Featherstone, original administrator of the estate of Mary A. Cole, deceased, by their attorney J. R. Beasley, and presents to the court for confirmation the final settlement of said administrator filed in this court on the 19th day of July, 1899; and also come H. P. Gorman, administrator in succession of said estate, by his attorney, Walter Gorman, and M. E. Winsett, on part of the heirs at law of said estate, by John Gatling, her attorney, and present their exceptions to said settlement, which said exceptions were filed herein on the 30th day of October, 1899.

And the court having heard the evidence, and the arguments of counsel, and having duly considered said settlement and the exceptions thereto, finds that the said L. P. Featherstone, the former and original administrator of the estate of Mary A. Cole, deceased, should be charged with the following sums, to-wit:

Proceeds of sale of Personal Property as per sale bill....	$277.38
Proceeds of sale of lots 5 & 6 in block (11) in the town of Forrest City, sold to Eddie C. Williams.....	1000.00
Proceeds of sale of the north part of Section 36 in Township 5 North Range 3 East, containing 32 acres, sold to George Taylor and James Fussell.....	196.00
Proceeds of sale of lot 21 in Block (16) in the town of Forrest City, sold to L. R. Grobmeyer.....	956.00
56 Rent received from John M. Brown for rent of store-house for the year 1893—12 mos. at $15.00 per Mo.	180.00
Interest on amount held by him since February, 1894.	206.15
Total Debits	$2815.53

And should be credited with the following sums, to-wit:

Various amounts covered by Voucher No. 1, filed with first settlement		$154.58
Amount collected from L. R. Grobmeyer by H. P. Gorman, Administrator in Succession.....		464.77
Amount paid I. M. Lutz on burial expenses.....		84.00
Am't paid to M. E. Winsett, Heir to ½ share.....		350.00
Am't paid to Lola B. Jett, Heir to 1/12 share. Personal property bought at sale.....	$40.40	
Rec'd by her from sale of homestead.....	32.00	
Rec'd by her as per voucher.....	32.50	
		104.90

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Am't p'd to Hugh S. Sellers, heir to 1/36 share. 3 vouchers, to-wit: 17.25, 3.00, 8.00		28.25
Am't paid to Mrs. McMillan (heir to 1/36 share)		25.00
Am't paid to Mrs. Susan J. Farley (heir to 1/12 share). Personal property bought at sale		89.50
Am't paid to Mrs. Maggie A. Chapman (Heir to 1/12 share) as per voucher of Fussell, Graham & Co		72.50
Am't paid to Mrs. Mattie D. Brooks (Heir to 1/12 share) as per note transferred to Fussell, Graham and Company		120.00
Amount paid Mrs. Louisa J. Wilkins (Heir to 1/12 share) personal property bought at sale		14.00
Amount paid W. P. Brandon, Exec. of John L. Brandon		125.00
57 Amount Commissions due said administrator as follows: On $1000.00 at 10 per cent	$100.00	
On $1815.53 at 5 per cent	90.77	
		190.77
Total Credits		$1824.25
Total debtits		$2815.53
Total credits		1824.25
Balance due from Featherstone		991.28

It is therefore considered, ordered and adjudged by the court that said L. P. Featherstone, former administrator of the Estate of Mary A. Cole, deceased, be and he is hereby ordered to pay over and deliver to H. P. Gorman, administrator in succession of said estate, the said sum of nine hundred, ninetyon*ine* and 28/100 dollars as shown by the above and foregoing statement of his account to be due to said estate.

STATE OF ARKANSAS, *County of St. Francis:*

I, G. B. Mallory, clerk of the circuit court and *ex-officio* clerk of the probate court in and for St. Francis County, State of Arkansas, do hereby certify that the within and foregoing is a full, true and complete copy of the order of said probate court as therein set forth as the same appears now in my office, duly entered in Probate Record M, at page 39.

In testimony whereof I have set my hand and seal this 2nd day of March, 1900.

G. B. MALLORY, *Clerk,*
By T. C. MERWIN, *D. Clerk.*

Endorsed: Filed March 2nd, 1900. G. B. Mallory, Clerk, by T. C. Merwin, D. Clerk.

CLOSE IN CENTER

58 *Warranty Deed from M. E. Winsett to Eddie C. Williams.*

Warranty Deed.

M. E. Winsett
to
E. C. Williams.

Know all men by these presents; that I, for and in consideration of the sum of $500.00 to me cash in hand paid by Eddie C. Williams, do hereby grant, bargain, sell and convey unto the said Eddie C. Williams, and unto her heirs and assigns forever the following lands lying in the County of St. Francis, and the State of Arkansas, to-wit:

My undivided one half interest as heirs at law of the late Mary A. Cole of Forrest City, Arkansas, all my right, title and interest in and to lots (5 & 6), five and six, in Block (11) eleven, in the town of Forrest City, as surveyed and plotted by John C. Hill, these being the lots upon which is located the residence of the late Mary A. Cole. To have and to hold the same unto the said Eddie C. Williams and unto her heirs and assigns forever, with all appurtenances thereunto belonging. And I hereby covenant with the said Eddie C. Williams that I will forever warrant and defend the title to the said lands against all lawful claims whatever.

Witness our hands and seals on this 29th day of May, 1893.

M. E. WINSETT. [SEAL.]

STATE OF TENNESSEE, *Carroll County:*

Personally appeared before me, W. E. Hailey, Notary Public, of the aforesaid State and County, M. E. Winsett, the within bargainor, with whom I am personally acquainted, and who acknowledged that she executed the within instrument for all the purposes therein contained.

Witness W. E. Hailey, Notary Public, this 29th day of May, 1893.

[SEAL.] W. E. HAILEY, *N. P.*

Filed for record this 2nd day of Feb. at 11:40 o'clock, 1894, and duly recorded on 3rd day of Feb., 1894.

F. LAUGHINGHOUSE, *Clerk,*
By JOHN MALLORY, JR., *D. C.*

59 STATE OF ARKANSAS, *St. Francis County:*

I, George B. Mallory, clerk of the circuit court and *ex-officio* Recorder of said county, do hereby certify that the foregoing is a true and perfect copy of the deed made by W. E. Winsett to E. C. Wil-

liams, as the same appears on Deed Record 34, p. 573, in my office:
Witness my hand this April 17, 1905.

G. B. MALLORY, *Clerk*,
By M. W. SEABORN, *D. C.*

Filed in my office April 17th, 1905.

G. B. MALLORY, *Clerk*,
By M. W. SEABORN, *D. C.*

60 *Warranty Deed from Lola B. Jett & W. E. Jett to Eddie C. Williams.*

Warranty Deed.

Lola B. Jett and W. E. Jett
to
Eddie C. Williams.

Know all men by these presents: That we, Lola B. Jett and W. E. Jett, her husband, for and in consideration of the sum of $83.33 to us in hand paid by Eddie C. Williams, do hereby grant, bargain, sell, and convey unto the said Eddie C. Williams and unto her heirs and assigns forever the following lands lying in the county of St. Francis and State of Arkansas, to-wit:

Our entire (1/12) one twelfth interest in and to lots (5 and 6) five and six Block (11) eleven in the town of Forrest City as surveyed and plotted by John C. Hill, these being the lots upon which is located the residence of the late Mary A. Cole, and this conveys the interest of Lola Jett as heir at law of Mary A. Cole, deceased.

To have and to hold the same unto the said Eddie C. Williams and unto her heirs and assigns forever, with all their appurtenances thereunto belonging.

And we hereby covenant with the said Eddie C. Williams that we will forever warrant and defend the title to said lands against all lawful claims whatever.

Witness our hands and seal on this 7th day of June, 1893.

[SEAL.] LOLA B. JETT.
W. B. JETT.

STATE OF ARKANSAS, *County of St. Francis:*

Be it remembered that on this day came before me, the undersigned, a notary public within and for the county aforesaid, duly commissioned acting, W. E. Jett, to me well known as the grantor in the foregoing and acknowledged that he had executed the same for the consideration and purposes therein mentioned and set forth.

And on the same day, also voluntarily before me the said Lola B. Jett, wife of the said W. E. Jett, to me well known and in the
61 absence of her husband, declared that she had of her own free will signed and executed the foregoing deed for the uses,

purposes and considerations therein contained and set forth without compulsion or undue influence of her said husband.

Witness my hand and seal as such notary public, this the 7th day of June, 1893.

[SEAL.] L. E. DAVENPORT,
Notary Public.

My Commission expires Feb. 8th, 1894.

Filed for record on this the 2nd day of Feb'y 1894, at 11 o'clock A. M. and duly recorded 3rd day of Feb. 1894.

F. LAUGHINGHOUSE, *Clerk,*
By JOHN MALLORY, JR., *D. C.*

STATE OF ARKANSAS, *St. Francis County:*

I, Geo. B. Mallory, clerk of the Circuit Court and *ex-officio* recorder of said county do hereby certify that the foregoing is a true, perfect and complete copy of the deed from Lola B. Jett to Eddie C. Williams as the same appears on deed record 34 page 568 in my office.

Witness my hand this 18th day of Apr. 1905.

G. B. MALLORY, *Clerk,*
By M. W. SEABORN, *D. C.*

(Endorsed:) Filed in my office 18th day of Apr. 1905. G. B. Mallory, Clerk. By M. W. Seaborn, D. C.

62 *Deed from Wilkins & Wife to Alice W. Featherston.*

P. B. Wilkins and Wife
to
Alice W. Featherstone.

Know all men by these presents that we, P. B. Wilkins and Laura J. Wilkins, his wife, for and in consideration of the sum of $120.00 to them cash in hand paid by Alice W. Featherston, do hereby grant bargain and sell unto the said Alice W. Featherston and unto her assigns and heirs forever the following lands lying in the county of St. Francis and State of Arkansas, to-wit: Lots No. Five (5) and six (6) in Block No. eleven (11) and Lot No. twenty-one (21) in Block No. sixteen (16) in plat and survey of said town by John C. Hill. Also the west half (½) of the North east quarter (¼) of Sec. thirty-six (36) in Township five (5) North and in Range three (3) East containing thirty two and eighty-three one hundredths 33 & 83/100) acres of land more or less.

To have and hold the same unto the said Alice W. Featherston and unto her heirs and assigns forever, with all appurtenances thereunto belonging.

And we hereby covenant with the said Alice W. Featherston that

we will forever warrant and defend the title to said lands against all lawful claims whatever.

Witness our hands and seals this sixth day of May, 1893.

P. B. WILKINS. [SEAL.]
LOUISA J. WILKINS. [SEAL.]

Recorded in Book 44, pp. 260 & 261.

63 *Deed from Farley and Wife to Alice W. Featherston.*

J. L. Farley and Wife S. J. Farley
to
Alice W. Featherston.

Know all men by these presents: that we J. L. Farley and S. J. Farley for and in consideration of the sum of $120.00 to them cash in hand paid by Alice W. Featherston, do hereby grant bargain and sell unto the said Alice W. Featherston and unto her heirs and assigns forever, the lands lying in the county of St. Francis and State of Arkansas, to-wit:

Our entire interest as heirs of Mary A. Cole to lots five (5) and six (6) in Block No. eleven (11), and lot No. twenty one (21) in Block No. sixteen (16) in the town of Forrest City according to the plat and survey of said town by John C. Hill also the West half of the Northeast quarter of sec. thirty-six (36) Township five (5) North Range three (3) East, containing 32 and 83/100 acres more or less.

To have and to hold the same unto the said Alice W. Featherston, and unto her heirs and assigns forever with all appurtenances thereunto belonging. And we hereby covenant with Alice W. Featherston that we will warrant and defend the title to said lands against all lawful claims whatever.

Witness our hands and seals on this 13th day of May, 1893.

S. J. FARLEY. [SEAL.]
J. L. FARLEY. [SEAL.]

Recorded in Book 44 pp. 259, 260.

LOSE IN CENTER

64 *Order of Probate Court of Feb'y 20, 1899.*

(Original).

In the Probate Court of St. Francis County, Arkansas, January Term, Feb. 20, 1899.

H. P. GORMAN, Administrator in Succession of the Estate of M. A. Cole, Deceased,

vs.

L. P. FEATHERSTONE, Original Administrator of the Estate of M. A. Cole, Deceased.

On this day it appearing to the court from the petition of H. P. Gorman, Administrator in Succession of the estate of Mary A. Cole, deceased, that L. P. Featherstone, the original administrator of said estate, has failed to file in this court his settlement accounting for the assets in his hands belonging to said estate.

It is therefore ordered by the court that said L. P. Featherston, of his sureties on his bond as administrator of the estate of M. A. Cole, deceased, to-wit: W. E. Jett, P. B. Wilkins, W. H. Coffey and E. Bonner, appear in this court on the first day of the April Term, 1899 and present a settlement for the said L. P. Featherstone, as administrator of said estate; otherwise his accounts will be stated and a balance fixed on that date; and that a copy of this order be served on said L. P. Featherstone and the sureties herein named ten days before the said April Term of this Court.

G. B. MALLORY, *Clerk,*
By T. C. MERWIN, *D. C.*

A True copy of the record.
(Signed) G. B. MALLORY,
[SEAL.] *Clerk of the Circuit Court and Ex-officio Clerk of the Probate Court of said St. Francis County.*

(Endorsed:) State of Arkansas. April 15, 1899. Cross County. I have duly served the within writ of delivery a copy and stating the substance thereof to the with- named P. B. Wilkins. (Signed) G. W. Stacy, Sheriff, by W. N. Taylor, D. S.

(Endorsed:) Filed April 17th, 1899. G. B. Mallory, Clerk. By T. C. Merwin, D. C.

65 *Exceptions to Adm'r Featherston's 2nd & Final Settlement.*

In St. Francis Probate Court, Oct. Term, 1899.

In re Estate of MARY A. COLE, Deceased.

Exceptions to Second and Final Settlement L. P. Featherston, the Original Administrator of said Estate.

Comes H. P. Gorman, administrator of the estate of Mary A. Cole, deceased, and Matilda Winsett, heir at law of the said Mary A. Cole, deceased and excepts to the second and final settlement of L. P. Featherston, the original administrator of said estate, and for cause states:

1. That said L. P. Featherston fails in said settlement to charge himself with amount of one year's rent of store-house collected from John M. Brown, to-wit: $180.00.

2. That the said L. P. Featherston fails to charge himself with interest on $687.23, received from L. R. Grobmeyer on the — day of ——, 1894, in part payment for store-house and not accounted for to the present time.

3. That said L. P. Featherston erroneously takes credit in settlement for the following amounts, to-wit:

Voucher No. 1	$125.00
Voucher No. 2	120.00
Voucher No. 3	72.50
Voucher No. 4	25.00
Voucher No. 8	17.25
Voucher No. 11	10.00
	$369.75

said being vouchers irregular in form and not being signed by any heirs, the legatee or creditor of the estate of said Mary A. Cole, deceased.

4. That said L. P. Featherstone erroneously takes credit in said settlement for the following amounts, to-wit:

66

Voucher No. 9	$3.00
Voucher No. 7	72.50
Voucher No. 10	33.50
Voucher No. 12	8.00

said vouchers, while signed by the heirs at law of the said Mary A. Cole, deceased, were given to the said L. P. Featherston, for money in his hand arising from the sale of the residence property of the said Mary A. Cole, deceased, the proceeds of which said sale were never charged to the said Featherston.

5. That vouchers Nos. 6, 13 and 14 do not appear to have been filed with said settlement.

Petitioners state that the correct amount due from said Featherston to the estate of Mary A. Cole, deceased is as follows:

Proceeds of sale of real estate	$1152.00
Less Amt. collected by H. P. Gorman, administrator	464.77
Amt. Collected by said L. P. Featherston	687.23
Interest on said Amt. 5 years at 6 per cent	206.15
Amt. rent collected from J. M. Brown	180.00

Credit.

By Amt. paid I. H. Lutz.....Voucher No. 5	$40.00
By Amt. paid I. H. Lutz by Grobmeyer	44.00

JOHN GATLING,
Att'y for M. E. Winsett, One of the Heirs at Law of M. A. Cole, Deceased.
WALTER GORMAN,
Att'y for H. P. Gorman, Adm'r in Suc. of the Estate of M. A. Cole, Deceased.

(Endorsed:) Filed in my office Oct. 30, 1899. G. B. Mallory, Clerk. By T. C. Merwin, D. C.

67 *Deposition of W. L. Sellers.*

In St. Francis Chancery Court.

E. BONNER, Plaintiff,
vs.
M. E. WINSETT ET ALS.

Depositions of Witnesses for Defendant.

The depositions of witnesses, taken at the office of Walter Gorman, in Forrest City, St. Francis county, Arkansas, on the 17th day of Mar., 1905, by agreement of R. J. Williams and J. R. Beasley, attorneys for plaintiff, and John Gatling and Walter Gorman, attorneys for defendant, to be read as evidence on the part of the defendant in the cause of E Bonner, plaintiff, against M. E. Winsett *et als.*, defendants, pending in the chancery court of St. Francis county.

W. L. SELLERS, being duly sworn, testifies as follows:

My name is W. L. Sellers; age 26 years, residence, Cross County, Arkansas, and occupation, a farmer.

Q. Who was your mother?

A. She was Kate Matthews before her marriage, and a niece of Mrs. M. A. Cole.

Q. Please state how much you have ever received from the estate of Mrs. M. A. Cole, deceased, either through L. P. Featherston, admr. or others.

(Q. and A. objected to as irrelevant.)

A. I have never received anything at all.

W. L. SELLERS.

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68 *Deposition of W. E. Jett.*

W. E. JETT, first being duly sworn, testifies as follows:

My name is W. E. Jett, age 57 years, residence St. Francis County, and occupation a farmer.

Q. Please state what interest you have in this suit?

A. I have no interest personally, but my wife was a niece of M. A. Cole, deceased, and entitled to 1/12 share of her estate.

Q. Do you know what amount your wife Lola Jett, has received from the estate of the said M. A. Cole?

A. Yes, I represented her in all the transactions with L. P. Featherston, the administrator, in trying to get her share of said estate.

Q. State what you have received from L. P. Featherston for her?

A. At the sale of personal property I bought in $40.40 worth, and gave L. P. Featherstone my note for this amount. After the homestead was sold by Featherstone to E. C. Williams he paid me $32.00 form the proceeds of said sale, and surrendered to me my note for $40.40 and took my receipt for the $72.40. This receipt was given on the 4th day of Dec. 1893, and is the same receipt which he takes credit for as Voucher Number 7, filed with his final settlement. I afterwards received from him $33.50, making in all $105.90.

Q. How do you know that the $32.00 came from the sale of the homestead to E. C. Williams?

A. Because when as soon as Featherstone sold the property I went to him and taken up this note for $40.40 and he paid me this $32.00 in money.

Q. Did he tell you that it was from the homestead?

(Q. objected to as leading.)

A. Yes he certainly did.

Q. Just state, Mr. Jett, what connection Mr. Featherstone had with the sale of the homestead to E. C. Williams?

A. He sold the place to Mr. Williams as administrator of the Cole estate. It was said to be $1000.00 in cash. He collected the
69 money and got the deeds up from the heirs and I suppose he gave the deeds to Mr. Williams.

(Answer objected to as incompetent and irrelevant.)

Q. When your wife executed the deed for her share in the homestead of Mrs. Cole, to whom was the deed delivered?

A. I delivered it to Mr. Fe[illegible]erstone.

Q. Did Featherstone pay [illegible] you at the time you delivered the deed the consideration expressed in it?

A. He gave up the note to me for $40.40 and paid me $32.00 in money.

Q. When he paid you the money on the deed did he take your receipt for the $72.40?

A. Yes, he took my receipt for it.

Q. Mr. Jett, Mr. Featherstone has taken credit in this settlement for a receipt dated Dec. 4, 1893, for $72.50. Please state if this is

the same receipt which you gave him at the time of delivering him the deed to your wife's share in the homestead?

A. Yes sir.

Q. Mr. Jett, the record in this cause shows that on the 29th day of Jan. 1900, there was a trial before the probate court of St. Francis County, Judge Geo. P. Taylor, Probate Judge, presiding, involving the final settlement of L. P. Featherstone as administrator of the estate of Mrs. M. A. Cole, deceased, and exceptions to said settlement filed by H. P. Gorman administrator in succession of said estate. Please state if you were present at the trial and did you testify at said trial as a witness?

A. I was there, but wasn't sworn to testify, but Judge Taylor asked me a good many questions about the case.

(Q. & A. objected to as incompetent and irrelevant.)

Q. Was there any testimony before the court on that date to the effect that L. P. Featherstone sold this homestead property, and that some of his vouchers, filed with said settlement, went for money received from the proceeds of the said sale?

A. The principal question asked me that day was concern-
70 ing the money for the sale of the Cole residence. I don't remember whether the same questions were asked anybody else but me.

(Q. & A. objected to as incompetent and irrelevant.)

Q. Was there any testimony before the court that day to the effect that several of the heirs of the Mary A. Cole estate had sold and conveyed their interest in said estate to other parties?

A. The Judge asked me if I knew that these heirs had conveyed their interest in the estate to other parties and I told him that I knew they had.

(Q. & A. objected to as incompetent and irrelevant.)

Q. Mr. Jett, state if you remember what attorneys were present during the trial, and taking part in it?

A. Mr. Gatling, and I believe Mr. Beasley and Mr. Gorman were present there and I think Mr. Fizer was there part of the time. I am not certain whether Mr. Fizer was there or not, but it seems to me that he was.

(Q. & A. objected to as incompetent and irrelevant.)

W. E. JETT.

71 Cross-examination of W. E. JETT:

Q. In your examination in chief you say that you have no interest personally in this suit. Were you not one of the sureties on the bond of Adm'r L. P. Featherstone?

A. Yes.

Q. It appears that you filed a personal claim against Mrs. Cole's estate for $92.00, which was allowed as a first class claim. Was that claim paid by Adm'r Gorman or by Adm'r Featherstone?

A. Adm'r Featherstone paid the claim by allowing me to keep

a mare belonging to the estate as the heirs claimed, though Featherstone never had the mare in his possession actually.

Q. How far from Forrest City were you living when you and your wife executed a deed to Mrs. Williams for your wife's 1/12 interest in the Cole residence, and where were you and your wife when the deed was signed?

A. We lived five miles north of town, but were in Forrest City when the deed was signed.

Q. Was Mrs. Williams' husband, sheriff Williams, present when you and your wife signed the deed?

A. I can't remember positively but don't think he was.

Q. Who was present?

A. I don't remember.

W. E. JETT.

Subscribed and sworn to this 22nd day of April, 1905, before me.
T. C. MERWIN, *Clerk.*

72 *Deposition of Jane McMillan.*

LOUISA JANE MCMILLAN, being duly sworn, testified as follows:

My name is Louisa Jane McMillan, generally known as Ida McMillan, age thirty-six, residence Cross County with my husband.

Q. State who your mother was and her relation to Mrs. M. A. Cole, deceased.

A. My mother was Kate Matthews before marriage, who was a niece of Mrs. M. A. Cole, deceased. She was one of the six children of Hugh Matthews, deceased, who was a brother to Mrs. M. A. Cole.

Q. At the time of Mrs. Cole's death, did you have any brothers or sisters?

A. I had two brothers.

Q. State how much money, or property of any kind you have ever received from the estate of Mrs. M. A. Cole, deceased, and through whom?

A. We received $25.00 from Featherstone for the house and lot here in town, the house she lived in at the time of her death. Featherstone wrote me and wanted me to sign the deed to the residence property. We didn't sign the deed for a short time, and then we signed it and sent it to him, and he sent us $25.00. That is all we ever received from him in any way.

(Q. & A. objected to as incompetent and irrelevant.)

LOUISA JANE McMILLAN.

73 *Deposition of Walter Gorman.*

WALTER GORMAN, being duly sworn, testifies as follows:

My name is Walter Gorman, age fifty three years, residence, Forrest City, Arkansas, and occupation, lawyer.

2. I have represented H. P. Gorman, as administrator in succes-

sion of the estate of Mary A. Cole, deceased, from Jan. 1st, 1899 until present time in this proceeding against L. P. Featherston as the former administrator of said estate and his bondsmen.

(Objected to by plaintiff as irrelevant.)

3. On the 20th day of Jan. 1899, the probate court of St. Francis County entered an order commanding the said L. P. Featherstone, the former administrator of said estate, and his bondsmen, W. I. Jett, P. B. Wilkins, W. H. Coffey, and E. Bonner to appear in said court on the first day of the April Term thereof and to file a final settlement of the account of the said L. P. Featherstone as such administrator.

(Objected to by plaintiff as not the best evidence.)

4. On the day named in said order, N. B. Fizer appeared, entered the appearance of Featherstone, and in Featherstone's behalf, and stated that Featherstone had not been able to find some of his vouchers and requested an extension of the time thirty days longer for the filing of this settlement. Reference is here made to certified copy of said order of court, marked Exhibit "A" and attached hereto. N. B. Fizer was at that time a practicing attorney and a member of the St. Francis bar.

(Objected to by plaintiff as irrelevant.)

5. Fizer frequently came to me after the above order was entered and pleaded for further time, on the ground that his client Featherstone lived in Texas and his only communication was by correspondence, to which I yielded, and finally filed the settlement on July 19, 1899, signed by "Fizer & Beasley," a law firm composed of N. B. Fizer and J. R. Beasley. Exceptions to said settlement were filed at the October Term, 1899. N. B. Fizer left this county in Dec. 1899, or the following January.

(Objected to by plaintiff as incompetent and irrelevant.)

6. The settlement and exceptions thereto, referred to above,
74 came up for hearing before Judge Geo. P. Taylor on Jan. 29th, 1900. At said trial oral testimony was offered to show that Featherston was not entitled to credit for the vouchers named in the exceptions and had not charged himself with all the sums that had gone into his hands. In ruling on the exceptions, the language of the court as near as I can recall it was "I cannot allow the administrator credit for the vouchers named in the exceptions without charging him up with the $1000.00 received from Williams for the homestead and the other items claimed, and I think it is best to state the account by charging him with all the items claimed, and by giving him credit by all the vouchers, as the difference will be small." He then took the papers, made the statement himself, and the result varied only $1.90 from the judgment asked for in the exception.

(Objected to by the plaintiff as incompetent and irrelevant.)

7. Mr. J. R. Beasley was present contending for the confirmation of the settlement.

Mr. John Gatling, attorney was present in the interest of Mrs. Winsett, and I for the present administrator. The testimony brought out fully the fact that several of the heirs to the estate had conveyed their interest to Featherston who had in turn reconveyed to Brandon & Baugh, which was necessary to explain the receipts signed by W. P. Brandon and Fussell Graham & Co. and also the fact that Featherston had sold the homestead to E. C. Williams for $1000.00, procured deeds from the several heirs, collected the money from Williams, and, in paying it out to the several heirs, had taken their receipts as administrator, and was claiming credit for them in his settlement.

(Objected to by plaintiff as incompetent and irrelevant.)

8. I deny that any information was withheld from the court. I don't know just what information Mr. Beasley had about the case. My present impression is, that Mr. Beasley became indignant at some of the rulings of the court and left the room before the trial was finally concluded, though I am not positive of this.

(Objected to by plaintiff as incompetent and irrelevant.)

75 9. I remember very positively, that N. B. Fizer, his law partner, was in possession of all the facts, both as to the sale of the homestead property to E. C. Williams and the conveyance by several of the heirs for their shares in the other property, Fizer discussed the case on several occasions with me, and his only expressed contention was that the deeds executed by the heirs acknowledged receipt of the consideration paid for the property, and they were therefore estopped from claiming that the several vouchers afterward given to Featherston were intended to be given for the sale price, $1000.00, of the homestead.

(Objected to by plaintiff as incompetent and irrelevant.)

Cross-examination of Mr. WALTER GORMAN:

Q. By reference to page 149 of the Claim Book, which is now placed before you, it will be seen that on the same line with the W. E. Jett claim of $92.00 against the Mary A. Cole estate are pencil marked the words: "This paid by F. says Jett." Was that memorandum made on the claim book by you, or by your brother, Henry Gorman, Adm'r in Suc. of Mary A. Cole's estate?

Ans. The memorandum was not made by me. The handwriting resembles that of my brother, H. P. Gorman, further than this I have no knowledge as to who wrote it.

Q. Please state whether or not you ever had any conversation with Mr. Jett in relation to that claim, and if so what was said about it?

Ans. He has mentioned the fact that he had filed such a claim but I cannot recall just what was said.

WALTER GORMAN.

76 EXHIBIT "A" TO WALTER GORMAN'S DEPOSITION.

In the Probate Court of St. Francis County, Arkansas, Apr. Term, 1899.

Be it remembered that on the 17th day of April, 1899, the same being the first day of the April 1899 term of the Probate Court of St. Francis County, Arkansas, and while said court was duly in session, the following among the proceedings were had, to-wit:

Est. of MARY A. COLE, Dec'd, H. P. GORMAN, Adm'r. in Suc.

App. of L. P. Featherston entered.
30 days to settle.

On this day comes H. P. Gorman, Adm'r of the estate of Mary A. Cole, dec'd, by Walter Gorman, his attorney, and it appearing to the court that on the 20th day of February, 1899, the same being a day of the regular January 1899 term of this court, an order was made and entered therein commanding L. P. Featherston, W. E. Jett, P. B. Wilkins, W. H. Coffey and E. Bonner to appear in this court on the first day of the next April term thereof, and file a final settlement of the account of said L. P. Featherston as former administrator of the estate of Mary A. Cole, deceased, and that a certified copy of said order was duly served on W. E. Jett, P. B. Wilkins, W. H. Coffey and E. Bonner, more than ten days before the first day of the present term of this court. And now comes L. P. Featherston by his attorney N. B. Fizer, Esqr. in response to the said order of this court, and enters his appearance herein, and moves the court to extend for 39 days the time of filing the final settlement of the said L. P. Featherston as administrator of Mary A. Cole, deceased, which motion is by the court granted.

77 STATE OF ARKANSAS, *St. Francis County:*

I, T. C. Merwin, the duly commissioned and acting clerk of the county court and *ex-officio* clerk of the probate court in and for St. Francis County, State of Arkansas, do hereby certify that the foregoing is a full true and perfect copy of the order of said court, therein set forth, as the same appears in my office duly entered in "Probate Court Record M" at pages 11 and 12.

In testimony whereof I have hereto set my hand and affixed the seal of said probate court on this March 17th, 1905.

T. C. MERWIN, *Clerk.*

COPY BOUND

78 *Depositions for Defendants.*

E. BONNER, Plaintiff,
vs.
M. E. WINSETT ET ALS., Def'ts.

Agreement to Take Depositions.

We, John Gatling and Walter Gorman, attorneys for the defendants and R. J. Williams and J. R. Beasley, attorneys for the plaintiff, in the above styled cause hereby agree that the depositions of witnesses to be read in evidence on the part of the defendants may be taken in the town of McLemoresville and State of Tennessee to administer oaths, we, hereby, waiving all irregularities in the taking of said depositions except as to competency and relevancy.
March 10th, 1905.

JOHN GATLING,
For Def'ts.
R. J. WILLIAMS,
Att'y for Pl'f.

Deposition of Mrs. M. E. Winsett.

Mrs. M. E. WINSETT being duly sworn testifies as follows:

Int. 1. State your name, age, residence and occupation.
Ans. to Int. 1. Name, Mrs. M. E. Winsett; age seventy-two years. And I live at McLemoresville, Tenn. Housekeeper.
Int. 2. State what relation, if any, you were to Mrs. Mary A. Cole, who died in the town of Forrest City, St. Francis County, Ark. in the early part of the year 1893, and of whose estate L. P. Featherstone qualified as administrator?
Ans. to No. 2. I am her sister.
Int. 3. State if you were acquainted with the said L. P. Featherstone and ever saw him?
Ans. to Q. No. 3. I never saw him.
Int. 4. State whether you ever had any correspondence with the said Featherstone in relation to the business and settlement of said estate, and if you did, please give as near as you can the substance of that correspondence and if you have now any letters that
79 he wrote you in regard to their business; please attach them to this deposition.

(Objected to by plaintiff as incompetent and irrelevant.)

Ans. to Q. 4. All the correspondence has been between Mr. Featherstone and my son-in-law, S. M. Bigham, who is acting as my agent in the Cole Estate.
Int. 5. The deed records of this county show that the heirs of the estate of the said Mary A. Cole, including yourself shortly after her death executed a deed to a residence here in Forrest City which had been her homestad to Mrs. Williams for the sum of $1000.00. Please

LOSE IN CENTER

state if you know who procured these to sign this deed and state how much of that $1000.00 you received and who paid it to you.

(Objected to by plaintiff as incompetent and irrelevant.)

Ans. to Ques. 5. Mr. Featherstone, the Administrator, caused me to sign the deed. I only received three hundred and fifty ($350.00) dollars. This amount was paid to me by Mr. Featherstone.

Int. 6. The settlements of the said L. P. Featherstone, as administrator of the said Mary A. Cole, which are filed in the probate court of this county, show that he files as voucher in one of his settlements and takes credit by the sum of $350.00 which was paid by him to you and filed your receipt for this amount as such voucher. Please state what this money was paid by him to you for.

(Objected to by plaintiff as incompetent and irrelevant.)

Ans. to Int. 6. It was paid to me as part of my one half interest in the Mary A. Cole homestead.

Int. 7. Please state whether the said L. P. Featherstone as administrator has ever paid you any other amount, if so, how much.

(Objected to by plaintiff as incompetent and irrelevant.)

Ans. to 7th Int. I have only received $350.00 from the estate.

Int. 8. Please state fully anything else you may know in regard to the administration of this estate by the said L. P. Featherstone and relate as fully as you can each and every transaction you had with him concerning the same.

(Qu. objected to by plaintiff as incompetent and irrelevant.)

80 Ans. to Int. 8. The business transactions of the estate have been between Mr. Featherstone and my son-in-law, S. M. Bigham.

M. E. WINSETT.

This deposition was taken before Dorsey P. Bramley, Notary Public in McLemoresville, Tenn. March 17, 1905.

81 *Deposition of S. M. Bigham.*

S. M. BIGHAM, being duly sworn, deposes as follows:

Int. 1. State your name, age, residence and occupation?

Ans. to Int. 1. S. M. Bigham, age forty-seven years, I live at McLemoresville, Tennessee, occupation druggist.

Int. 2. State how long you have lived in McLemoresville, Tenn.

Ans. to Int. 2. Forty-seven years.

Int. 3. State if you are acquainted with Mrs. M. E. Winsett, who lives in your town and if so state how long you have known her?

Ans. to Int. 3. I have known her all my life.

Int. 4. If you are in any way related to her please state how?

Ans. to Int. 4. I am her son-in-law.

Int. 5. Are you acquainted with her business affairs, and, if so, state to what extent and especially as to her interest in the estate of

Mary A. Cole, who died in the town of Forrest City, Ark. in the early part of the year, 1893?

(Objected to by plaintiff as incompetent and irrelevant.)

Ans. to Int. 5. I know that she is entitled to a half interest in the M. A. Cole estate.

Int. No. 6. Are you acquainted with L. P. Featherstone, who was the administrator of the estate of the said Mary A. Cole? Did you ever have any correspondence with him while he was acting as such administrator and if so please state the substance of that correspondence as near as you can and if you have any letters from him, please attach them to this deposition.

(Qu. objected to by plaintiff as incompetent and irrelevant.)

Ans. to Int. 6. I am acquainted with Mr. Featherstone and have had some correspondence with him in regard to the Mary A. Cole estate.

Int. 7. Do you know whether the said Featherstone ever paid Mrs. M. E. Winsett any part of her interest in the estate of the said Mary A. Cole, if so, how much, and state whether or not you know that this was all that he ever paid her and state how and why
82 you know it.

(Objected to by plaintiff as incompetent and irrelevant.)

Ans. to 7th Int. I know he paid her the $350.00 dollars (three hundred and fifty dollars); I know this is all he ever paid her, because all the correspondence was between myself and Mr. Featherstone.

Int. No. 8. The said L. P. Featherstone, as administrator in his settlement in the probate court in this county, has taken credit by the amount of $350.00 paid by him to Mrs. M. E. Winsett. Please state if you know from what source this money came?

(Objected to by plaintiff as incompetent and irrelevant.)

Ans. to Int. 8. It was paid to her as a part of her one half interest of the Mary A. Cole homestead.

Int. 9. Please state fully any other facts you may know in regard to the settlement of this estate by the said Featherstone.

(Qu. objected to by plaintiff as incompetent and irrelevant.)

Ans. to Int. 9. I don't know of anything else.

(Signed) S. M. BIGHAM.

This deposition was taken before Dorsey P. Bramley, Notary Public in McLemoresvile, Tenn., March 17th, 1905.

83

Final Decree.

E. BONNER
vs.
M. E. WINSETT ET ALS.

On this day this cause coming on to be heard, comes the plaintiff, E. Bonner, by his attorney- R. J. Williams and J. R. Beasley, Esquires, and also comes the defendants, M. E. Winsett *et als.* by their attorneys, John Gatling and Walter Gorman, Esquires, and both sides announcing themselves ready for trial, this cause was submitted to the court on the bill of complaint, the Answers of defendants, the depositions filed in the cause for both plaintiff and defendants, and documentary evidence consisting of certified copies of the Settlement, Reports, Orders of the Probate Court and other documents in the matter of the Estate of Mary A. Cole, deceased, wherein L. P. Featherstone was administrator and E. Bonner and others were sureties on his bond as such administrator, and certified copies of certain deeds made by heirs of Mary A. Cole, deceased, to Mrs. Eddie C. Williams.

Whereupon the court, after argument of counsel and consideration of the evidence, found that the sale of the residence property of Mary A. Cole, deceased, being lots 5 & 6 in Block 11 in the town of Forrest City, Ark., was never made under and by virtue of an Order of the Probate Court of St. Francis County; that the sale of said property was not made by L. P. Featherstone as administrator of said estate; that the probate court of St. Francis County never ordered the sale of said residence property by the said administrator; that at the time of the sale thereof there were funds in the hands of said administrator belonging to said Estate largely in excess of the sum required to pay all of the debts of said estate; that the sale of the said residence property of the said Mary A. Cole, deceased, to Mrs. Eddie C. Williams was made by the heirs of the said Mary A. Cole, deceased; that the acts of the said L. P. Featherstone in relation to the sale of said residence property were not done in his capacity

84 as administrator of said estate and that his bondsmen are in no sense liable therefor; and that the order of the probate court of St. Francis County of Jan. 29, 1900, wherein L. P. Featherstone, as administrator, was charged with the proceeds of said residence property, amounting to one thousand dollars, was void as to that item and charge, and to that extent was a fraud upon the rights of the plaintiff herein. The court further finds that H. P. Gorman was the administrator in Succession of the estate of Mary A. Cole, deceased; that as such administrator the said H. P. Gorman brought suit in the circuit court of St. Francis County on the bond of L. P. Featherstone, the former administrator of the estate of Mary A. Cole, deceased, and against E. Bonner and M. H. Coffey as sureties on his bond to enforce the payment by them of the amount adjudged by the probate court of St. Francis County, to be due on Jan. 29, 1900, from L. P. Featherstone as administrator of said estate, being

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$991.28; that in said cause judgment was rendered by the circuit court against the plaintiff herein, an appeal was taken to the Supreme Court, and the judgment of the circuit court was affirmed; that the defendants herein were about to execute said judgment, and that the plaintiff herein had no adequate remedy except in a court of chancery.

Wherefore it is considered, ordered, adjudged and decreed by the court that the defendants, Henry P. Gorman, Administrator in Succession of said Estate, Mrs. M. E. Winsett, Mrs. P. B. Wilkins, Mrs. Maggie Chapman, Mrs. Mattie Brooks, Mrs. W. E. Jett, Mrs. Ida McMillan, William L. Sellers, Joseph Moore, Mary Moore, and Cornelia Moore, heirs-at-law of Mary A. Cole's estate, their agents and attorneys be and they are hereby perpetually enjoined from executing or attempting to execute said judgment against the plaintiff, E. Bonner, and that the said E. Bonner, the plaintiff herein, recover of and from the said defendants all costs in this behalf expended for which execution may issue as at law. To which finding and decree of the court, the defendants, H. P. Gorman, as administrator
85 in Succession of the estate of Mary A. Cole, deceased, and Mrs. W. E. Winsett, Mrs. P. B. Wilkins, Mrs. Maggie Chapman, Mrs. Mattie Brooks, Mrs. W. E. Jett, Mary Moore, and Cornelia Moore heirs at law of Mary A. Cole, deceased, by their attorneys John Gatling and Walter Gorman excepted at the time and prayed an appeal to the Supreme Court, which is granted.

86 *Cost Bill.*

Bill of Cost.

Transcript	19.50.
Index	3.30.
Certificate	50.
	$23.40
Sheriff's Fees	4.00
Clerk's Court Fees	6.55
Dep. of Winsett	4.00
Dep. of Jett	5.00
Total	$42.85

Clerk's Certificate.

STATE OF ARKANSAS, *St. Francis County:*

I, George B. Mallory, Clerk of the Chancery Court of St. Francis County, Arkansas, do hereby certify that the foregoing is a true, perfect and complete Transcript of the record in the case of E. Bonner, plaintiff *vs.* M. E. Winsett *et al.* together with the bill of costs in said suit, as the same appears from the record and file of papers in my office.

LOSE IN CENTER

Witness my hand and seal of office this the 18th day of June, 1905.

[SEAL.]

G. B. MALLORY, *Clerk*,
By M. W. SEABORN, *D. C.*

87 *Filing of Transcript in Supreme Court.*

No. 6065.

HENRY P. GORMAN, Adm'r, *et al.*
vs.
E. BONNER.

Transcript.

Filed, August 3rd, 1905.

P. D. ENGLISH, *Clerk.*

88 *Petition for Certiorari.*

In the Supreme Court of Arkansas.

M. E. WINSETT ET AL., Appellants,
vs.
E. BONNER, Appellee.

Comes the appellee, E. Bonner, and respectfully suggests and states to the Clerk of said Supreme Court that the Transcript of the Record filed in this case is imperfect, the Order of Sale made by the Probate Court of St. Francis county on Jan. 26, 1894, *In re* the Estate of Mary A. Cole deceased, being omitted and left out of the transcript, and therefore the said appellee, E. Bonner, prays the Clerk of said Supreme Court of Arkansas to issue a writ of Certiorari commanding the Clerk of the Chancery Court of St. Francis county to transmit to the Supreme Court a true copy of the said Order of Sale of said probate Court.

R. J. WILLIAMS,
J. R. BEASLEY,
Solicitors for Appellee.

Digest (S. & H.) Sec. 1024.

(Endorsed on Back:) Winsett *vs.* Bonner Pet. for Certiorari. Filed June 26, 1906. P. D. English, Cl'k.

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89 *Writ Issued.*

STATE OF ARKANSAS:

In the Supreme Court.

The State of Arkansas to the Clerk of the Chancery Court of St. Francis County, Greeting:

Whereas, In a case pending in the Supreme Court of the State of Arkansas, wherein M. E. Winsett *et al.* were appellants, and E. Bonner was appellee, it has been suggested by said appellee that there is a diminution of the record filed in this case, in this: The clerk omitted from the transcript the "Order of Sale made by the Probate Court of St. Francis County on January 26th, 1894, *in re* Estate of Mary A. Cole, deceased, with a prayer that the record be amended. You are, therefore, hereby commanded that you certify to our Supreme Court, without delay, a full true and complete transcript of the record of said Chancery Court, so as above suggested to be diminished that our Supreme Court, upon consideration of a complete record, may cause to be done therein what should be done. Hereof fail not and make due return of this writ under your official seal.

In testimony whereof, I, P. D. English, Clerk of said Supreme Court hereto set my hand, at the City of Little Rock, and affix the seal of said Court this 27th day of June, 1906.

[SEAL.] P. D. ENGLISH, *Clerk.*

90 In the Probate Court, St. Francis County, Arkansas, January Term, 1894.

Be it remembered that on the 26th day of January 1894, the same being the 4th day of regular January 1894 Term of the St. Francis Probate Court, and while said court was duly in session, the following among other proceedings were had, to-wit:

In re Estate of MARY A. COLE, Dec'd.

Order of Sale.

Now on this day was presented to the Court the petition of L. P. Featherstone as Administrator of the Estate of Mary A. Cole deceased, sworn to as the law directs, upon consideration thereof the Court doth find from the evidence adduced and an examination of the sale bill filed by the Administrator and the list of claims legally exhibited against said Estate, that the personal property in the hands of the Administrator and subject to the claims of the creditors is not sufficient to pay the debts probated against said Estate. And it appearing to the Court that the said Mary A. Cole deceased at the time of her death was seized in fee of the following Re-l Es-

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tate lying and being in St. Francis County, Arkansas, to-wit: Lot No. 21 in Block No. 16 in the town of Forrest City according to the original plat and survey of said town as made by John C. Hill, and also a part of the North part of Section 36 in Township 5 North in Range 3 East containing 32 acres of land more or less and that the prayer of the petitioner to sell said lands should be granted.

It is therefore considered ordered and adjudged by the Court that the said L. P. Featherstone as Administrator of said Estate do sell said Real Estate above described at public vendue at the front door of the court house in St. Francis County on Saturday the 17th day of February 1894, to the highest bidder on a credit of — Months
91 from the day of sale, and that he take note with approved security for the purchase price. That he cause said lands to be advertised for sale by posting Notices of sale in ten of the most public places in said County for 20 days prior to the day of sale, stating the time, terms, and place of sale, and a description of the property to be sold. That he execute a deed to the purchaser or purchasers of said lands, retaining a lien upon the land for the purchase price, and that he report his action herein to the present term of this court, if in session, and if not that he report to the next term of this court.

92 *Sheriff's Return on Writ.*

STATE OF ARKANSAS, *County of St. Francis:*

I, T. C. Merwin, the duly commissioned and acting clerk of the County Court and *Ex-Officio* Clerk of the Probate Court within and for the County aforesaid, do hereby certify that the within and foregoing pages of writing contain a true and perfect copy of the order of sale *in Re* Estate of Mary A. Cole, dec'd as the same appears of record in my office in Probate Court Record "I" at page 195 *et seq.*

In testimony whereof, I hereunto set my hand and seal of said Court, this the 28th day of June, 1906.

[SEAL.] T. C. MERWIN,
Clerk of the County and Probate Court of St. Francis County, Arkansas.

(Endorsed on back:) Gorman, Adm'r and Winsett. *vs.* Bonner Certiorari and return. Filed June 28, 1906. P. D. English, Clerk.

93 *Motion for Time to File Briefs.*

STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 28th day, being the fourth Monday of May, A. D. 1906, at the Courthouse, in the City of Little

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Rock, the following proceedings were had, to-wit: On the 9th day of July, 1906, a day of said term:

H. P. GORMAN, Adm'r, Appellant,
vs.
E. BONNER, Appellee.

Appeal from St. Francis Chancery Court.

Comes the appellee by solicitor and files his motion for time in which to file his briefs, and cause being shown, and appellant consenting, said motion is granted, and he is allowed 30 days' time from this date.

94 *Submission of Cause.*

STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 28th day being the fourth Monday of May, A. D. 1906, at the Courthouse, in the city of Little Rock, the following proceedings were had, to-wit: On the 15th day of October, 1906, a day of said Term.

H. P. GORMAN, Adm'r, *et al.*, Appellees,
vs.
E. BONNER, Appellee.

Appeal from St. Francis Chancery Court.

This cause being regularly called, come the parties thereto by their solicitors and said cause is submitted upon the transcript of the record and the briefs filed, and is by the Court taken under advisement.

95 *Decree of Supreme Court.*

STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 28th day, being the fourth Monday of May, A. D. 1906, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 22nd day of October, a day of said term:

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H. P. GORMAN, Adm'r in Suc. Estate of Mary A. Cole, Dec'd, *et al.*,
Appellants,
vs.
E. BONNER, Appellee.

Appeal from St. Francis Chancery Court.

This cause came on to be heard upon the transcript of the record of the Chancery Court of St. Francis County, and was argued by solicitors, on consideration whereof it is the opinion of the court that said Chancery Court erred in entering a decree enjoining appellant Gorman, Administrator, or the heirs from attempting to enforce the judgment of the Circuit Court, whereas the complaint should have been dismissed for want of equity.

It is therefore ordered and decreed by the court that the decree of said Chancery Court in this cause rendered be and the same is hereby, for the error aforesaid reversed, annulled and set aside with costs, and that this cause be remanded to said Chancery Court with directions to dismiss the complaint of plaintiffs for want of equity.

It is further ordered and decreed that said appellants recover of said appellee all their costs in this court in this cause expended, and have execution thereof.

96 *Opinion by Supreme Court.*

No. 212.

In the Supreme Court of Arkansas, Octo. 22, 1906.

GORMAN
v.
BONNER.

Statement by the Court.

In 1893 L. P. Featherston was by the probate court of St. Francis County appointed administrator of the estate of Mary A. Cole, deceased. He gave bond and qualified and took charge of the estate as administrator. E. Bonner and certain other residents of St. Francis county became sureties on his bond. Before making his final settlement as administrator, Featherston removed to Texas, and Henry P. Gorman was appointed administrator in succession. Afterwards the probate court of St. Francis County made a final settlement of the accounts of Featherston as administrator of the Cole estate, and, after setting out the sums with which he was charged and those with which he was credited, found that he was due the estate the sum of $991.28, and ordered him to pay over that sum to Gorman, the administrator in succession. This judgment of the probate court recites that Featherston, as well as his sureties, E. Bonner and W. H. Coffey, appeared by attorney.

Afterwards Featherston undertook to appeal from this judgment to the circuit court, but the appeal was dismissed on motion of the plaintiff on account of some informality in the proceedings.

Gorman, the administrator in succession, then brought an action against the bondsmen in the St. Francis Circuit Court to recover the amount found due by the probate court which Featherston had failed to pay over to his successor in office as required by the judgment. The sureties, E. Bonner and W. H. Coffey, appeared and filed an answer and counterclaim in which they set up that the probate court in the final settlement with Featherston charged him as administrator with $1000 as proceeds of the sale of the residence property of Mrs. Cole, whereas the defendants alleged that
97 this property was not sold by Featherston as administrator or under the order of the probate court, but was sold by him as agent of the heirs of Mrs. Cole; that the probate court had no right or authority to charge Featherston with that sum; and that it was a fraud on the defendants to make such charge. They further alleged that with such charge eliminated Featherston would owe the estate nothing. They prayed that the cause be transferred to the chancery court, and that the judgment of the probate court be set aside, and defendants be granted all proper relief.

This counterclaim of the defendants alleged that Featherston was insolvent, and that neither he nor either of his sureties was present when the probate court made the final settlement of the accounts of Featherston as administrator, but it is not alleged that Featherston was not duly notified that the settlement would be made, nor does it deny that he and his sureties were represented in the probate court by an attorney, as the judgment of the probate court recites.

For this or some other reason the circuit court sustained a demurrer to the answer and counterclaim, and, defendants failing to amend or plead further, judgment was rendered against the bondsmen for the amount adjudged by the probate court to be due by Featherston. On appeal the judgment was affirmed by the Supreme Court, probably for the reason that, as the judgment of the probate court recited that Featherston and his sureties appeared before it by attorney, they had an ample remedy by appeal.

Afterwards E. Bonner, one of the sureties against whom this judgment was rendered by the circuit court, brought this action in the St. Francis Chancery Court to enjoin the judgment rendered against him by the circuit court, on the ground that it was based on a judgment of the probate court which it had obtained by fraud.

Gorman, the administrator in succession, and the other defendants appeared and filed a demurrer to the complaint, which was overruled. They then filed an answer. On the hearing the
98 chancellor found, among other things, that the sale of the residence property of Mrs. Cole, for proceeds of which Featherston as administrator of her estate was charged by the probate court $1,000, was made by the heirs of his estate and at a time when the funds in the hands of the administrator belonging to the estate were largely in excess of the debts of the estate; "that the acts

of Featherston in relation to the sale of said residence property were not done in his capacity as administrator of said estate, and that his bondsmen are in no sense liable therefor; and that the order of the probate court of St. Francis County of January 29, 1900, wherein Featherston as administrator was charged with the proceeds of said residence property, amounting to $1,000, was void as to that item and charge, and to that extent was a fraud upon the rights of the plaintiffs herein.

The court further finds that H. P. Gorman was the administrator in succession of the estate of Mrs. Cole, and as such administrator he had recovered judgment in the circuit court against the plaintiff Bonner as one of the sureties on the bond of Featherston for the amount found due by the probate court; that this judgment had been affirmed by the Supreme Court, and was about to be enforced, and that plaintiff Bonner had no adequate remedy except in a court of chancery.

He therefore entered a decree enjoining Gorman administrator or the heirs from attempting to enforce such judgment of the circuit court. Gorman and the heirs appealed.

Opinion.

RIDDICK, *J.* (after stating the facts):

This is an appeal by H. P. Gorman, administrator in succession, and the heirs of Mary A. Cole, from a judgment of the chancery court enjoining them from enforcing a judgment of the circuit court which the administrator had recovered against E. Bonner and W. H. Coffey, bondsmen of L. P. Featherston, the first administrator of that estate.

99 The chancellor found that in the final settlement which the probate court made of the accounts of L. P. Featherston as such administrator the probate court charged him with $1,000 as the proceeds of the sale of the residence property of Mrs. Cole, when the fact was that Featherston did not sell such property as administrator or under an order of the probate court, but sold it as the agent of the heirs of that estate who were the owners of it. The chancellor found that this judgment of the probate court charging Featherston with the proceeds of such sale was therefore void and in law fraudulent as to the bondsmen of Featherston. But it does not follow, because the judgment of the circuit court was based on a void or fraudulent judgment of the probate court, that it is also either void or fraudulent. When these parties were sued in the circuit court, they should have set up any defense they had against such action, whether the same was legal or equitable. If the judgment of the probate court was fraudulent or void, that could have been alleged.

A defendant cannot, under the Code system of procedure, let judgment go against him at law upon a legal liability, and then enjoin the judgment in equity upon equitable grounds which were known before the judgment at law. The effect of the Code procedure has

modified, and to a large extent rendered obsolete, the ancient jurisdiction of equity over judgments at law. The rule now is that parties must litigate the whole controversy in one action, and a defendant who has an equitable defense to an action at law is not now without a remedy against such action, for he can interpose such defense by answer or counterclaim, and, if necessary, have the case transferred to the chancery court. Kirby's Digest, § 6098. If he fails to do this and allows judgment at law to go against him, he may find that his defenses have been cut off by such judgment, and that he is without a remedy, either in law or equity. Reeve *v.* Jackson, 46 Ark. 272; Ward *v.* Derrick, 57 Ark. 500; Moore *v.* McCloy, 70 Ark. 505; Daniel *v.* Garner, 71 Ark. 484.

100 It is true that Bonner, the plaintiff in this action to enjoin the judgment at law against him, did undertake to set up the same matters on which he bases his right to relief here as a defense to the legal action. He undertook to show that the probate court had improperly charged Featherston as administrator $1,000 as proceeds of land which he did not sell as administrator, but there was no allegation in the answer that Featherston did not have due notice of this proceeding in the probate court. The judgment of the probate court recited that he appeared by his attorney, while the answer of Bonner simply alleged that neither he nor his bondsmen were present at the time the probate court made the settlement. This did not show that he was not duly served with notice, or that the recital that he appeared by attorney was not true. If he appeared by attorney, he had a plain remedy by appeal, and on that or some other ground a demurrer was sustained to the answer and counterclaim of the sureties alleging that the judgment of the probate court was void as to them. They pleaded no further, and final judgment went against them at law.

Counsel for appellants have labored to show that the judgment of the probate court was substantially correct, by reason of the fact that the court, while it made improper charge against the administrator, also allowed him improper credits. But that is now immaterial, for it was settled by the judgment of the circuit court which was based on this order of the probate court. That judgment at law was rendered by a court of competent jurisdiction against parties who had been duly summoned and who appeared and made defense. If there were errors in that proceeding, a court of equity has no power to correct them, for such courts do not sit as courts of review upon the proceedings of the courts of common law. Reeve *v.* Jackson, 46 Ark. 272.

It is not alleged or shown that there was any fraud in the procurement of the judgment at law, and we see no valid reason why it should be enjoined. The judgment of the chancery court to that effect will be reversed, with an order to dismiss the complaint for want of equity.

101 No. 6065.

In the Supreme Court of Arkansas.

H. P. GORMAN, Adm'r, *et al.*, Appellants,
vs.
E. BONNER, Appellee.

Petition for Rehearing.

Comes appellee, E. Bonner, and respectfully petitions the Honorable Court to grant him a Re-hearing of this cause upon the ground that the decision of the court was contrary to the law and the evidence. And allow him to present a Brief in support of this petition.

R. J. WILLIAMS,
J. R. BEASLEY,
Solicitors for Appellee.

We hereby certify that in our opinion and belief the grounds of the foregoing pettition are true.
Oct. 31, 1906.

R. J. WILLIAMS.
J. R. BEASLEY.

(I certify that I gave a copy of this petition to John Gatling, Esq'r. an Attorney for appellants, on this the 1st day of Nov., 1906.)

JOHN R. BEASLEY.

Filed Nov. 2, 1906.
P. D. ENGLISH, *Clerk*,
By W. P. SADLER, *D. C.*

102 *Submission of the Motion to Rehear.*

STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 28th day, being the fourth Monday of May, A. D. 1906, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 5th day of November, 1906, a day of said term:

H. P. GORMAN, Adm'r, *et al.*, Appellants,
vs.
E. BONNER, Appellee.

Appeal from St. Francis Chancery Court.

On this day the petition for rehearing heretofore filed herein is submitted to the court together with the briefs thereof and is by the court taken under advisement.

103 *Petition for Rehearing Denied.*

STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 28th day, being the fourth Monday of May, A. D. 1906, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 5th day of November, 1906, a day of said term:

H. P. GORMAN, Adm'r, *et al.*, Appellants,
vs.
E. BONNER, Appellee.

Appeal from St. Francis Chancery Court.

Being fully advised the petition for rehearing filed herein is denied.

104 *Caption.*

No. 6612.

Pleas Before the Hon. E. D. Robertson, Judge of St. Francis Chancery Court, on the 14th Day of December, 1906.

E. BONNER and E. L. BONNER, Appellants,
vs.
H. P. GORMAN, Adm'r, *et al.*, Appellees.

Appeal from Decree Dismissing Bill.

R. J. Williams and J. R. Beasley, Solicitors for Appellants.
Walter Gorman and John Gatling, Solicitors for Appellees.

105 In the St. Francis Chancery Court, December Term, 1906.

Be it remembered that on this the 14th day of December, 1906, the same being the 5th day of the regular December, 1906, Term

of the St. Francis Chancery Court; and while said Court was duly in session, the following among other proceedings were had, to-wit:

H. P. GORMAN, Adm'r, Appellant,
vs.
E. BONNER, Appellee.

Decree.

This cause coming on to be heard, come the appellant, H. P. Gorman as administrator, *et als.*, by their solicitors, John Gatling and Walter Gorman, and the appellee, E. Bonner, by his solicitors, J. R. Beasley and R. J. Williams, and this cause is submitted to the court on the mandate from the Supreme Court which was filed November 15th, 1906, which is in words and figures as follows:

Mandate of Supreme Court.

STATE OF ARKANSAS, *sect:*

In the Supreme Court.

Be it remembered, that at a term of the Supreme Court of the State of Arkansas, begun and held at the Court House, in the City of Little Rock, on the 28th day, being the fourth Monday of May, A. D. 1906, amongst others, were the following proceedings, to-wit: On the 22nd day of October, A. D. 1906, a day of said Term:

H. P. GORMAN, Adm'r, Appellant,
vs.
E. BONNER, Appellee.

Appeal from St. Francis Chancery Court.

This cause came on to be heard upon the transcript of the record of the Chancery Court of St. Francis County, and was argued by solicitors; on consideration whereof it is the opinion of the
106 court that said Chancery Court erred in entering a decree enjoining appellant Gorman, Administrator, or the heirs from attempting to enforce the judgment of the circuit court, whereas the complaint should have been dismissed for want of equity.

It is therefore ordered and decreed by the Court that the decree of said Chancery Court in this cause rendered, be, and the same is hereby, for the error aforesaid, reversed, annulled and set aside with costs; and that this cause be remanded to said chancery court with directions to dismiss the complaint of plaintiffs for want of equity.

It is further ordered and decreed that said appellants recover of said appellee all of their costs in this cause expended, and have execution thereof.

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In testimony, that the above is a true copy of the decree of said Supreme Court, rendered in the case therein stated, I. P. D. English, clerk of said Supreme Court, hereunto set my — and affix the seal of said Supreme Court, at my office in the City of Little Rock, this 14th day of November, A. D. 1906.

[SEAL.] P. D. ENGLISH, *Clerk.*

And after consideration of the same, it is ordered, adjudged, and decreed by the court that the bill in this cause, which was filed by the said E. Bonner as plaintiff against the said H. P. Gorman, as administrator, *et als.*, defendants, be and the same is hereby, dismissed for want of equity, and the injunction issued herein is dissolved.

And it is further adjudged and decreed by the court that the said H. P. Gorman, as administrator, *et als.*, do have and recover of and from the said E. Bonner all costs in this cause expended, including the cost in this court and in the Supreme Court, for all of which execution may issue.

And it further appearing to the court that the said E. Bonner at the commencement of this cause prayed for and obtained an injunction against the defendants therein, H. P. Gorman, ad-
107 ministrator *et als.*, to enjoin a judgment for the sum of $1058.17, which had been rendered in the Supreme Court in their favor and against E. Bonner and W. H. Coffey, and on the 29th day of December, 1903, filed his injunction bond with E. L. Bonner as his surety; it is therefore further adjudged and decreed by the court that the said H. P. Gorman, as administrator, *et als.* do have and recover of and from the said E. Bonner and E. L. Bonner, the sum of One Hundred and eighty-seven dollars and eighty cents ($187.80), as damages they have sustained by reason of said injunction, the said amount being interest on said judgment of $1058.17 from the 29th day of December, 1903, the date of the issuance of said injunction, to this date, at the rate of 6 per cent. per annum. And shall also have and recover of and from the said E. Bonner and E. L. Bonner interest on said sum of $187.80 from this date until paid at the rate of 6 per cent. per annum for all of which execution may issue, as at law.

108 *Clerk's Certificate.*

STATE OF ARKANSAS, *County of St. Francis:*

I, G. B. Mallory, the duly commissioned and acting Clerk of the Circuit Court and *Ex Officio* Clerk of the Chancery Court, within and for the County and State aforesaid, do hereby certify that the within and foregoing instrument of writing is a true copy of the proceedings in the Chancery Court in case of H. P. Gorman, Administrator, *et als. v.* E. Bonner, as appear of record in my office in Chancery Court Record "F" at page 110 *et seq.*, since said cause was remanded to the chancery court of said St. Francis County on Nov. 15, 1906.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this the 11th day of February, 1907.

[SEAL.]

G. B. MALLORY, *Clerk*,
By M. W. SEABORN, *D. C.*

Clerk's fees $1.25.

109 *Appeal to Supreme Court Granted.*

Prayer for Appeal to Supreme Court of Arkansas.

Addressed to Clerk of said Court.

STATE OF ARKANSAS, *St. Francis County:*

Whereas the Chancery Court of St. Francis County decided the case of E. Bonner *v.* H. P. Gorman, Administrator, *et al.* in favor of said E. Bonner; and whereas the Supreme Court of Arkansas reversed said decree on appeal and remanded the cause to the Chancery Court with directions to dismiss the complaint for want of equity; and whereas said Chancery Court, at its December Term, 1906, in accordance with the mandate of said Supreme Court, dismissed said cause and dissolved the injunction which had been issued therein; and whereas said Chancery Court also rendered judgment against said E. Bonner and his surety, E. L. Bonner, on said injunction bond; and whereas said E. Bonner and said E. L. Bonner verily believe that they are aggrieved by said last mentioned decree of said Chancery Court, (which is not now in session in said county of St. Francis), and desire to take an appeal from said decree to the Supreme Court of Arkansas, in order that justice may be done and a final decree may be rendered in said cause by said Supreme Court.

Now, therefore, the said E. Bonner and the said E. L. Bonner present herewith an authenticated copy of all the subsequent proceedings of said chancery court in said cause since it was remanded by said Supreme Court to said Chancery Court on the 15th day of November, 1906, and pray the Clerk of said Supreme Court, the Hon. P. D. English, to grant them an appeal from said decree of said chancery court of December 14, 1906, to the Supreme Court of Arkansas, in accordance with the statute laws of said State, and to supersede said decree.

Respectfully submitted.

R. J. WILLIAMS,
J. R. BEASLEY,
Solicitors for E. Bonner and E. L. Bonner.

Feby. 18th, 1907.

Appeal Granted.
P. D. ENGLISH, *Clerk.*

110 *Supersedeas Bond.*

STATE OF ARKANSAS:

In the Supreme Court.

E. BONNER and E. L. BONNER, Appellants,
vs.
H. P. GORMAN, Adm'r, *et al.*, Appellees.

Appeal from St. Francis Chancery Court.

Whereas E. Bonner and his surety on the injunction bond, E. L. Bonner, have taken an appeal from the decree of the St. Francis Chancery Court rendered at its December Term, 1906, on the mandate of the Supreme Court, against the said E. Bonner and said surety, E. L. Bonner, in favor of H. P. Gorman, Administrator, *et als.*, for the sum of —— dollars with costs, and the said appellants desire to supersede said decree, now the said E. Bonner and E. L. Bonner, principals, and N. B. Nelson surety, hereby covenant with the said appellees that the said appellants will pay to the appellees all costs and damages that may be adjudged against the appellants on the appeal, or in the event of the failure of the Appellants to prosecute said appeal to a final judgment in the Supreme Court, or if said appeal shall for any cause be dismissed, that said sureties shall pay to the Appellees all costs and damages, and shall perform the judgment of the Court appealed from; also that said appeal shall be prosecuted without delay; also that they will satisfy and perform the judgment or order appealed from in case it should be affirmed, and any judgment or order which the Supreme Court may render or order to be rendered by the inferior court, not exceeding in amount or value the original judgment or order.

Witness our hands this 12th day of February, 1907.

E. BONNER.
E. L. BONNER.
N. B. NELSON.

I hereby certify that this is a good bond.
T. C. MERWIN, *County Clerk.*

111 *Filing Transcript in Supreme Court.*

No. 6612.

E. BONNER and E. L. BONNER
vs.
H. P. GORMAN, Adm'r, *et als.*

St. Francis C'ry *Cl'k.* Edw'd D. Robertson, Ch.

Transcript.

Filed February 18th 1907.

P. D. ENGLISH, *Clerk.*

Summons & Copy of Supersedeas issued.

112 *Attorney's Certificate.*

I, John Gatling, one of the Solicitors for the Appellees, state that I have carefully examined the record and believe that the appeal in this cause is prosecuted for delay merely.

March 13, 1907.

JOHN GATLING,
Solicitor for Appellees.

113 *Motion to Advance & Affirm as a Delay Case.*

STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 26th day, being the fourth Monday of November, A. D. 1906, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 18th day of March, 1907, a day of said term:

E. BONNER ET AL., Appellants,
vs.
H. P. GORMAN, Adm'r, *et al.*, Appellees.

Appeal from St. Francis Chancery Court.

Come the appellees by solicitor and file a motion to advance and affirm this cause as a delay case, and said motion is set for submission on April 8th, prox.

114 *Motion Filed.*

In the Supreme Court of Arkansas, November Term, 1906.

E. BONNER and E. L. BONNER, Appellees,
vs.
H. P. GORMAN, Adm'r, *et al.*, Appellees.

Motion to Advance and Affirm.

Come the appellees, H. P. Gorman, Adm'r *et al.*, by their Solicitor, John Gatling, and move the Court to advance this cause and affirm the judgment as a delay case.

They state that they have complied with Section 1229 of Kirby's Digest and made the proper indorsement on the record by their said Solicitor.

They further state that this appeal is taken from a decree of the St. Francis Chancery Court rendered at the December Term, 1906,

which was simply a decree entered upon the ma-date from this court in the case of H. P. Gorman, Adm'r Appellant *vs.* E. Bonner, Appellee, which was decided by this court on the 22nd day of October, 1906.

That cause was a bill to enjoin the collection of a judgment of this court, which bill was dismissed by this court on the 22nd of October, 1906, as above stated, and the said chancery court in entering the decree on the mandate above mentioned dismissing the bill, also rendered a decree against the said E. Bonner and his surety, E. L. Bonner, for the amount of interest on the judgment which they had enjoined and only for the time that it was enjoined at 6 per cent. If that was not error, then there is no error in said decree from which this is an appeal.

Wherefore the appellants pray the court to advance this cause and affirm the judgment.

JOHN GATLING,
Solicitor for Appellees.

Filed March 16, 1907.
P. D. ENGLISH, *Clerk.*

115 *Notice to Opposing Counsel.*

In the Supreme Court of Arkansas, November Term, 1906.

E. BONNER and E. L. BONNER, Appellants,
vs.
H. P. GORMAN, Adm'r, *et al.*, Appellees.

Notice of Filing Motion to Advance and Affirm.

To J. R. Beasley, Solicitor for Appellants:

You are hereby notified that I will on Friday, the 22nd of March, 1907, file in the Supreme Court a motion to advance and affirm the decree in this cause as a delay case.

JOHN GATLING,
Solicitor for the Appellees.

I acknowledge service of this notice, this March 13, 1907.

J. R. BEASLEY,
Solicitor for Appellants.

Filed March 16, 1907.
P. D. ENGLISH, *Clerk.*

116 *Appellants' Response.*

In the Supreme Court of Arkansas, November Term, 1906.

No. 6612.

E. BONNER and E. L. BONNER, Appellants,
vs.
H. P. GORMAN, Adm'r, *et al.*, Appellees.

Appellants' Response to Appellees' Motion.

Come the appellants, E. Bonner and E. L. Bonner, by their solicitors, R. J. Williams and J. R. Bea-ley, and in response to appellees' Motion and Petition to advance this cause and affirm the judgment as a delay case, appellants say:

1. That the appeal in this case was not taken merely for delay, and there is nothing in the record which indicates that appellants were actuated by any such motive.

2. Appellants admit that this appeal was taken from a decree of the St. Francis Chancery Court rendered at its December Term 1906 upon the mandate from the Supreme Court in the case of H. P. Gorman, Adm'r *et al.*, Appellants vs. E. Bonner, Appellee.

3. Appellants admit that said chancery suit of E. Bonner vs. H. P. Gorman, Adm'r *et al.*, was brought to enjoin the collection of a judgment of the circuit court of St. Francis county which had been affirmed by the Supreme Court, and appellants aver that in said action at law the defendants were not allowed to have a trial upon the merits of a sufficient defense, which was refused, as the bill states, upon the ground "that sureties could not in a court of law attack a judgment against their principal and have no remedy except in a court of equity by original bill:" or, as stated by the Supreme Court in its opinion of October 10, 1903, because "the answer to the complaint on the bond was a collateral attack upon the judgment of the probate Court."

4. Appellants deny that said bill in chancery of E. Bonner
117 was dismissed by the Supreme Court on appeal, and aver that said cause was remanded with directions to the lower court to dismiss the bill and dissolve the injunction.

5. Appellants admit that the chancery court at its December Term 1906 entered a decree as directed upon said mandate, and that it went further and entered a decree against the said E. Bonner and against his surety on the injunction bond, E. L. Bonner, for interest on the judgment at law from the date of the injunction; and appellants aver that in both of said particulars the action and proceeding of said chancery court was wrongful, illegal, inequitable and unjust: (1) because no damages were proven, and in this respect the Chancellor's decree went beyond the Mandate; and (2) because said judgment of the circuit court of St. Francis county, which was based upon the void and fraudulent judgment of the probate court, was

null and void, and was not "due process of law," for the reason that the circuit court refused to consider the merits of the sufficient defense set up in the answer and cross-complaint of the defendant; and was in conflict with the Fourteenth Amendment to the Constitution of the United States, and to the Act of Congress enacted on the 20th day of April, 1871, entitled "An Act to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States and for other purposes;" and the same disregard of said Fourteenth Amendment and Act of Congress which made the judgment of the circuit court a nullity, affected also the judgments of the Supreme Court, and the judgment of the chancery court upon said mandate, and rendered them all invalid.

Wherefore appellants respectfully and earnestly insist that appellees' motion should be overruled, and this case should take its place upon the docket of this Court, to be tried and determined upon its merits, and upon the final hearing that the decree of the Chancellor upon said mandate should be reversed, set aside and for naught held, and his first decree in all things affirmed.

Respectfully submitted,

R. J. WILLIAMS,
J. R. BEASLEY,
Solicitors for Appellants.

Filed April 12, 1907.

P. D. ENGLISH, *Clerk*,
By W. P. SADLER, *D. C.*

118 *Motion to Adv. & Aff. Set for Submission April* 15, 1907.

STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 26th day, being the fourth Monday of November, A. D. 1906, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 25th day of March, 1907, a day of said term.

E. BONNER ET AL., Appellants,
vs.
H. P. GORMAN ET AL.

Appeal from St. Francis Chancery Court.

For cause shown the submission of the motion to advance and affirm this cause as a delay case is postponed until April 15th prox.

119 *Motion to Adv. & Aff. Submitted.*

STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, that at a term of the Supreme Court of the State of Arkansas, begun and held on the 26th day, being the fourth Monday of November, A. D. 1906, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit:
On the 15th day of April, 1907, a day of said term:

E. BONNER and E. L. BONNER, Appellants,
vs.
H. P. GORMAN, Adm'r, *et al.*, Appellees.

Appeal from St. Francis Chancery Court.

The response having been filed to the motion to advance and affirm this cause as a delay case, the said motion is now submitted to the Court, and taken under advisement.

120 *Motion to Adv. & Aff. Granted.*

STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, that at a term of the Supreme Court of the State of Arkansas, begun and held on the 26th day, being the fourth Monday of November A. D. 1906, at the Courthouse in the City of Little Rock, the following proceedings were had, to-wit: On the 22nd day of April, 1907, a day of said term:

E. BONNER and E. L. BONNER, Appellants,
vs.
H. P. GORMAN, Administrator, *et al.*, Appellees.

Appeal from St. Francis Chancery Court.

This cause came on to be heard upon the transcript of the record of the Chancery Court of St. Francis County, and upon the motion to advance and affirm this cause as a delay case and the response thereto, on consideration whereof it is the opinion of the court that there is no error in the proceedings and decree of said Chancery Court in this cause, and that the said motion to advance and affirm this cause as a delay case should be sustained but without penalty.
It is therefore ordered and decreed by the court that the decree of said chancery court in this cause rendered be and the same is hereby in all things affirmed with costs, and that said appellees recover of

said appellants and N. B. Nelson, surety in the supersedeas bond filed in this cause the sum of One Hundred and Eighty Seven Dollars and Eighty cents, with interest thereon at six per cent. from the 14th day of December, A. D. 1906, the amount of judgment of said Chancery Court.

It is further ordered and decreed that said appellees recover of said appellants and said surety, all their costs in this court and the court below in this cause expended, and have execution thereof.

121 *Opinion on Motion to Adv. & Affirm by Supreme Court.*

STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 26th day, being the fourth Monday of November, A. D. 1906, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 22nd day of November 1907, a day of said term:

No. 237.

In the Supreme Court of Arkansas, April 22nd, 1907.

BONNER
v.
GORMAN.

Opinion.

Per Curiam:

This is a motion to advance and affirm this case as a delay case.

The only question in the case is whether the decree is in conformity to the mandate of this court. The record has been carefully looked into and the decree found to be in strict accord with the mandate and opinion of the court and there is nothing new for consideration. Ordinarily this would stamp this case as a delay case and it should be advanced and affirmed and under the practice in such cases the ten per cent. penalty would be added. But it is evident from the record that the appellant has brought this case here in order to seek a writ of error to the Supreme Court of the United States. It will be with the Chief Justice to decide whether there is a Federal question herein but when a case is manifestly brought here in good faith to obtain a review in the Federal Supreme Court although there is nothing in it for this court to consider yet such object prevents it being the class of cases where the penalty should be inflicted.

The cause is advanced and judgment affirmed.

122 *Authentication of Record.*

Supreme Court, State of Arkansas, *ss.*

I, P. D. English, Clerk of said Court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the equity suit of Edward Bonner, plaintiff *vs.* Henry P. Gorman, Administrator, *et al.*, defendants, said equity suit having been to said Supreme Court twice, the number of said suit on the first appeal by said defendants being No. 6065, and on the second appeal by Edward Bonner and his surety on the injunction bond, Edward L. Bonner, being No. 6612; and I also certify that the foregoing are true, full and complete copies of the Opinions delivered by said Supreme Court on the first and second appeals, as the same now appears on file in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Little Rock, Arkansas, this 25 day of May, 1907.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas.

123 Copy.

Assignments of Errors.

Supreme Court of Arkansas.

No. 6612.

EDWARD BONNER and EDWARD L. BONNER, Appellants,
vs.
HENRY P. GORMAN, Adm'r, *et al.*, Appellees.

Now come the above named Appellants, Edward Bonner and Edward L. Bonner, and file herewith their petition for a writ of error, and say that there are errors in the records and proceedings of the above entitled cause, and, for the purpose of having the same reviewed in the United States Supreme Court, make the following assignment:

1. The Supreme Court of Arkansas erred in reversing the first decree of the Chancellor, and commanding him to dismiss the bill and dissolve the injunction.

2. The Supreme Court of Arkansas erred in affirming the decree of the Chancellor which was rendered upon said Mandate.

3. It was error for the Supreme Court of Arkansas to hold that the judgment of the Circuit Court estopped the said Edward Bonner from maintaining his suit in the Chancery Court,

(*a*) Because there was no trial upon the merits in the Circuit

Court, the issues presented by the answer and cross complaint of the defendants, Bonner and Coffey, being disregarded upon the ground that sureties could not in a court of law attack a judgment against their principal; and the Supreme Court on appeal affirmed the judgment of the Circuit Court upon the ground that "The judgment of the Probate Court will be presumed to be correct, unless corrected for error on appeal, or other direct proceeding."

(*b*) Because no appeal is necessary from a void judgment, which may be attacked either directly or collaterally, and the record shows that the judgment of the Probate Court against the principal of Edward Bonner was void for the reason that it was determined
124 upon an issue not raised by the pleadings, in the actual absence of the party against whom it was rendered; and for the additional reason that it charged the first administrator, L. P. Featherstone, the principal of said Edward Bonner, with the proceeds of the sale of the residence property of his intestate which was sold by the heirs and not by him as administrator under an order of the Probate Court.

4. The judgment of the Probate Court being *coram non judice* and null and void, for the reasons heretofore stated, it necessarily follows that all other judgments and orders based upon it were void also, and the Supreme Court of Arkansas erred in refusing to consider the merits of the suit in equity, and erred in refusing to consider the Federal question embraced in the record, and the result was that said Appellants were deprived of their property without due process of law, in violation of the Act of Congress enacted April 20, 1871, entitled "An Act to enforce the provisions of the 14th Amendment to the Constitution of the United States, and for other purposes;" and in violation of Section One of the 14th Amendment of our National Constitution, which expressly says: "Nor shall any State deprive any person of life, liberty or property without due process of law."

Wherefore for these reasons and causes apparent upon the face of the record therein, the said Appellants, Edward Bonner and Edward L. Bonner, pray that the said errors may be corrected, and the orders and decrees rendered and entered as aforesaid in said equity suit by the Supreme Court of the State of Arkansas may be set aside and for naught held and esteemed, and that the said Supreme Court of Arkansas may be directed by the Honorable the Supreme Court of the United States to affirm the first decree of the Chancellor in said cause, and to proceed further therein as equity and justice may require.

JAMES P. CLARK,
RUFUS J. WILLIAMS,
JOHN R. BEASLEY,
Solicitors for Appellants.

Filed May 9, 1907.
PEYTON D. ENGLISH, *Clerk.*

125 *Petition for Writ of Error.*

Supreme Court of Arkansas.

No. 6612.

EDWARD BONNER and EDWARD L. BONNER, Appellants,
vs.
HENRY P. GORMAN, Adm'r, *et al.*, Appellees.

Considering themselves aggrieved by the final decision of the Supreme Court of Arkansas in rendering judgment against them in the above entitled cause, the said Appellants, Edward Bonner and Edward L. Bonner, hereby pray a writ of error from the said decision and judgment to the United States Supreme Court, and an order allowing them to give a supersedeas bond. Assignment of Errors herewith.

JAMES P. CLARKE,
RUFUS J. WILLIAMS,
JOHN R. BEASLEY,
Solicitors for Appellants.

STATE OF ARKANSAS, *ss:*

Supreme Court.

Let the writ of error issue upon the execution of a bond by said Appellants, Edward Bonner and Edward L. Bonner, to the Appellees, Henry P. Gorman, Administrator, *et al.*, in the manner provided by law; such bond, when approved, to operate as a supersedeas. This the 9th day of May, 1907.

JOS. M. HILL,
Chief Justice Supreme Court of Arkansas.

Filed May 9, 1907.
PEYTON D. ENGLISH, *Clerk.*

COPY BOUND

126 Copy.

Bond.

STATE OF ARKANSAS, *ss:*

In the Supreme Court.

No. 6612.

EDWARD BONNER ET AL., Plaintiffs in Error,
vs.
HENRY P. GORMAN, Administrator, *et al.*, Defendants in Error.

Whereas the plaintiffs in error, Edward Bonner and Edward L. Bonner seek to prosecute their writ of error to the United States Supreme Court to reverse the judgment rendered in the above-entitled action by the Supreme Court of the State of Arkansas at its October Term, 1906, against them, in favor of the defendants in error, Henry P. Gorman, Administrator of Mary A. Cole's estate; Mrs. Margaret E. Winsett, Mrs. Parley B. Wilkins, Mrs. Maggie Chapman, Mrs. Mattie Brooks, Mrs. William E. Jett, Mrs. Ida McMillen, William L. Sellers, Joseph Moore, Mary Moore and Cornelia Moore, for the sum of $187.80, with interest and costs, and also affirming the decree of the Chancery Court rendered upon the Mandate of the said Supreme Court; and the plaintiffs in error desire to supersede said judgment of the Supreme Court of Arkansas rendered on the 22d of April, 1907.

Now, therefore, the said plaintiffs in error, Edward Bonner and Edward L. Bonner, and James Fussell and A. Becker sureties, hereby covenant with the said defendants in error that the said plaintiffs in error will pay to the defendants in error all costs and damages that may be adjudged against the plaintiffs in error on the writ of error, or in the event of the failure of the plaintiffs in error to prosecute said writ of error to a final judgment in the
127 United States Supreme Court, or if said writ of error shall for any cause be dismissed, that said sureties shall pay to the defendants in error all costs and damages, and shall perform the judgment of the Court from which the writ of error was taken; also that said writ of error shall be prosecuted without delay; also, that they will satisfy and perform the judgment or order from which the writ of error is taken in case it should be affirmed, and any judgment or order which the United States Supreme Court may render, or order to be rendered by the Supreme Court of Arkansas, not exceeding in amount the original judgment or order.

Witness our hands, this 6 day of May, 1907.

E. BONNER. [SEAL.]
E. L. BONNER. [SEAL.]
JAMES FUSSELL. [SEAL.]
A. BECKER. [SEAL.]

I hereby certify that the foregoing is a good bond.

G. B. MALLONY,
Clerk Chancery Court St. Francis County, Ark.

LOSE IN CENTER

Bond approved and to operate as a supersedeas.

JOS. M. HILL,
Chief Justice Supreme Court of Arkansas.

May 9/1907.

Filed May 9, 1907.
PEYTON D. ENGLISH, *Clerk.*

128 *Writ of Error & Allowance.*

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Edward Bonner *et al.* and Henry P. Gorman, administrator, *et al.*, wherein was drawn in question the construction of a clause of the Constitution and a statute of the United States, and the decision was against the right specially set up and claimed under such clause of the said Constitution and statute, a manifest error hath happened, to the great damage of the said Edward Bonner *et al.*, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 9th day of May, in the year of our Lord one thousand nine hundred and seven.

[The Seal of the Circuit Court, Western Division of East. Dist. Ark., U. S. A.]

W. P. FEILD,
Clerk U. S. Cir. Ct., West. Div., East Dist. of Arkansas.
By W. PRESLEY FEILD, *D. C.*

Allowed.
JOS. M. HILL,
Chief Justice Supreme Court of Arkansas.

Filed May 9, 1907.
PEYTON D. ENGLISH, *Clerk.*

129 *Certificate of Lodgment.*

Supreme Court State of Arkansas.

I, P. D. English, Clerk of the said Court, do hereby certify that there was lodged with me as such Clerk on the 9th day of May, 1907, in the matter of Edward Bonner and Edward L. Bonner *vs.* Henry P. Gorman, Administrator, *et al.*,

1. The original bond of which a copy is herein set forth.

2. Twelve copies of the writ of error, as herein set forth, one for each defendant and one to file in my office.

3. A copy of the original assignment of errors and prayer for reversal, as herein set forth.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Little Rock, Arkansas, this the 9th day of May, 1907.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas.

130 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Henry P. Gorman, Administrator of the Estate of Mary A. Cole, deceased; Mrs. Margaret E. Winsett, Mrs. Parley B. Wilkins, Mrs. Maggie Chapman, Mrs. Mattie Brooks, Mrs. William E. Jett, Mrs. Ida McMillen, William L. Sellers, Joseph Moore, Mary Moore, and Cornelia Moore, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Arkansas wherein Edward Bonner and Edward L. Bonner are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of Arkansas, this 9th day of May, 1907.

JOS. M. HILL,
Chief Justice Supreme Court of Arkansas.

Attest:

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas.

I have a copy, and further service of this Citation is waived. This 11th day of May, 1907.

JOHN GATLING,
Of Counsel for Defendants in Error.

Filed May 9, 1907.

PEYTON D. ENGLISH, *Clerk.*

131 *Return to Writ.*

UNITED STATES OF AMERICA, *Supreme Court of Arkansas, ss:*

In obedience to the command of the within Writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Arkansas, in the city of Little Rock, this 25 day of May, 1907.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas.

Plaintiffs' costs due Gorman admr. # 6065	$49.90
Defendants' " " Bonner 6612	1.25
" " " Chancery Court due Gorman adr., 6065	19.45
Transcript to U. S. Sup. Court paid by E. Bonner	54.60

Endorsed on cover: File No. 20,751. Arkansas supreme court. Term No. 348. Edward Bonner and Edward L. Bonner, plaintiffs in error, *vs.* Henry P. Gorman, administrator of the estate of Mary A. Cole, deceased, *et al.* Filed June 3d, 1907. File No. 20,751.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

EDWARD BONNER, *et al.*,
Plaintiffs in Error,

vs.

HENRY P. GORMAN, ADMR., *et al.*,
Defendants in Error.

No. 102.

BRIEF FOR PLAINTIFFS IN ERROR.

JAMES P. CLARKE,
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Counsel for Plaintiffs in Error.

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STATEMENT.

This equity case is here by writ of error directed to the judges of the Supreme Court of Arkansas.

The federal question involved in the lawsuit is based upon that provision in Section one of the 14th amendment to the Constitution of the United States which says: "Nor shall any State deprive any person of life, liberty or property without due process of law."

Plaintiff in error alleges in his assignment of errors that he has been deprived of his property in violation of said constitutional provision, and in violation of the act of congress enacted April 20, 1871, entitled "An Act to enforce the provisions of the 14th amendment to the Constitution of the United States, and for other purposes" (Tr., p. 123).

The injunction bill in this case was filed on December 14, 1903, by Edward Bonner, the only solvent surety of L. P. Featherstone, the first administrator of the estate of Mary A. Cole, deceased, against Henry P. Gorman, administrator in succession, and the heirs of said estate (Tr., p. 2).

The names of the heirs and the amount of each interest were as follows: Mrs. Winsett, ½; Mrs. Jett, 1-12; Mrs. Wilkins, 1-12; Mrs. Farley, 1-12, Mrs. Brooks, 1-12; Mrs. Chapman, 1-12; Mrs. McMillan, 1-36; Hugh Sellers, 1-36; and Wm. Sellers, 1-36 (Tr., p. 3).

On March 15, 1893, Featherstone filed his bond as administrator with W. E. Jett, P. B. Wilkins, W. H. Coffey, and Edward Bonner, as his sureties, all of whom, except Bonner, are insolvent, and Coffey is dead.

Mrs. Cole left three parcels of real estate which sold for $2,152, and a little personal property which sold for $277.38; a total of $2,429.38.

The debts of the estate amounted to a little over $400; and, as the residence property was not needed for the payment of debts, *it was sold by the heirs in* 1893, *for* $1,000, and they executed their deeds to the purchaser, in which they acknowledged the receipt of the purchase money (Tr., pp. 3 and 4).

The other two parcels of land were sold on credit by Administrator Featherstone for an aggregate of $1,152, *only* $674 *of which was ever collected by him* (Tr., p. 6).

The first settlement account of Administrator Featherstone was filed January 26, 1894, with vouchers, showing that he had paid out $64.92 more than had gone into his hands, and that a sale of real estate would be necessary for the payment of debts (Tr., p. 5).

Thereupon he was ordered by the probate court to sell the store house in Forrest City, and 32 acres of land in St. Francis County, but he was *not* ordered to sell the residence property which had been sold by the heirs (Tr., p. 90).

That was the only settlement Administrator Featherstone ever made, and it was confirmed (Tr., p. 6).

In 1895 he moved with his family to Texas. In 1896 Henry P. Gorman was appointed administrator in succession. Gorman filed a settlement account in 1898, which shows that all the debts of the estate had been paid, and the settlement account filed by him in July, 1903, shows that he had on hand at that time $481.88 belonging to said estate (Tr., p. 47).

Early in 1899 the sureties of Administrator Featherstone were ordered to appear in the probate court and make a final settlement for him, and in July of that year, two of them, Bonner and Coffey, filed a settlement account with fourteen vouchers, showing that said estate was indebted to him in the sum of $23.57, the debits being $1,152 and the credits $1,175.57 (Tr., p. 49).

Nothing was said about the residence property in the settlement account filed by the sureties (Tr., p. 49).

And in the exceptions filed thereto in October, 1899, it was *not* insisted that Administrator Featherstone should be charged with the proceeds of the sale by the heirs of said residence property (Tr., p. 65).

But in January, 1900, the probate court charged Administrator Featherstone with $1,000 for the residence property, which had been sold by the heirs in

1893, thus bringing him out in debt to the estate in the sum of $991.28; and said Administrator Gorman brought suit on February 12, 1900, in the Circuit Court of St. Francis County, Arkansas, against Bonner and Coffey to enforce the payment of this amount (Tr., p. 7).

In order to protect his sureties, Administrator Featherstone filed his affidavit on February 16, 1900, for an appeal to the Circuit Court from the judgment of the probate court against him; and that case, as well as the case against his sureties, was put on the docket of the Circuit Court for the March term, 1900, and both cases were continued to the September term (Tr., pp. 7 and 8).

In the meantime, on the 21st and 22nd days of August, 1900, Administrator Featherstone's deposition was taken at Galveston, Texas, and the probate appeal case was ready for trial at the September term, but Administrator Gorman got the case continued to the next March term, 1901, and at that term he succeeded in getting the appeal dismissed upon the ground that no order granting an appeal had been entered by the probate court (Tr., p. 8).

Administrator Gorman then filed demurrers to the answer and cross-complaint of the sureties in the action brought by him against them in the Circuit Court (Tr., p. 8).

In said answer and cross-complaint the sureties attacked the judgment of the probate court against Administrator Featherstone as void and fraudulent, because of the item in the settlement account charging him as administrator with $1,000 on account of said residence property; but the Circuit and Supreme Courts sustained the demurrers to the answer and cross-complaint, and *refused to consider the merits of the sufficient defense set up by the sureties*, upon the ground that the sureties could not in a court of law attack a

judgment against their principal, and the Supreme Court, in its opinion said:

> "The judgment of the probate court will be presumed to be correct, unless corrected for error on appeal, *or other direct proceeding.*"
>
> *Bonner vs. Gorman*, 71 Ark. 480.

Bonner then filed his bill in the chancery court, as before stated, against Administrator Gorman and the heirs of said estate.

The object of the bill was to perpetually restrain said defendants from enforcing the judgment in favor of said Administrator Gorman for $991.28, which had been rendered by the Circuit Court of St. Francis County, Arkansas, against said Bonner and Coffey, and which had been affirmed by the Supreme Court on appeal (Tr., p. 9).

The bill states that said judgment of the Circuit Court against said sureties was given to enforce the void and fraudulent judgment of the probate court against Administrator Featherstone, the probate court having illegally charged him in January, 1900, with $1,000 as proceeds of the sale of the residence property of his intestate, which was *not* sold by him under an order of the probate court, but which was sold in 1893 by the heirs, who executed their deeds to the purchaser, and acknowledged therein the receipt of the purchase money (Tr., p. 7).

It is further stated in said bill that the pleadings in the probate court did *not* raise the question of charging Administrator Featherstone with the proceeds of the sale by the heirs of the residence property (Tr., p. 7).

And the bill further stated that in said action at law against the sureties, which began in the Circuit Court, they filed an answer and cross-complaint, which

were disregarded, and *a trial upon the merits was refused* by the Circuit Court and the Supreme Court upon the ground that the sureties could not, in a court of law, attack a judgment against their principal, and have no remedy except in a court of equity by original bill (Tr., p. 8).

A demurrer to the bill in equity was overruled; no plea of *res adjudicata* was filed; and it was *not* alleged in the answer that plaintiff was estopped by the judgment of the Circuit Court.

The answer was simply a plea in confession and avoidance.

It was *an argumentative answer* in which the defendants admit:

> (a) That said residence property was *not* sold by Administrator Featherstone under an order of the probate court.
>
> (b) That the question of charging him with $1,000 as proceeds of the sale by the heirs of the residence property was *not* an issue presented by the pleadings in the probate court.
>
> (c) That the credits claimed by the sureties for their principal were allowed by the probate court.
>
> (d) That in the action at law against two of the sureties—Bonner and Coffey—a trial upon the merits was refused by the Circuit Court and by the Supreme Court upon the ground that the sureties could not in a court of law attack a judgment against their principal and have no remedy except in a court of equity by original bill.

The failure of defendants to deny these allegations of the bill was equivalent under the statute to admitting them to be true. See Kirby's (Ark.) Digest., Sec.

6137. And this was equivalent to saying that they had no defense.

But defendants averred in said answer to the bill in equity, that the probate court had nullified the allowance of those credits by charging Administrator Featherstone with $1,000 on account of said residence property; and that he had collected the purchase money for said residence and *paid it out to the heirs as their agent,* and then filed the receipts he took from them as vouchers to support credits claimed for him by his sureties in his last settlement account as administrator (Tr., pp. 18, 19, 20).

The difference between said answer and the exceptions filed to said settlement account is the difference between $1,000 *and* $117.

It will be seen by reference to said exceptions that *only four of the fourteen vouchers* were excepted to on the ground that they were given, or intended to be given, to Mr. Featherstone for money derived from the sale of the residence property, to-wit: Vouchers No. 9, 7, 10 and 12, said amounts being $3.00, $72.50, $33.50 and $8.00, a total of $117 (Tr., p. 65).

Probate Judge Taylor, who died in May, 1902, gave no reason in said judgment for his action in charging Administrator Featherstone with the proceeds of the sale by the heirs of the residence property (Tr., p. 55).

It would be absurd to say that he purposely made an illegal charge to nullify credits which were allowed by himself.

The record shows that C. F. Hinton was probate judge in 1893, when said residence was sold by the heirs and deeds executed by them to the purchaser (Tr., p. 37).

It may have been that Judge Taylor knew nothing about those deeds and supposed the residence property

was sold by Administrator Featherstone under an order of the probate court.

The bill charges that the fact that the sale and deeds were made by the heirs, was fraudulently concealed from Probate Judge Taylor when said settlement came up for consideration (Tr., p. 7).

This was denied by the answer, but the attorney for the sureties swore that he knew nothing of those deeds at that time, and that *nothing was said about them in his presence on that occasion* (Tr., p. 26).

The probate court clearly had jurisdiction to determine whether any or all of the credits claimed by the sureties for their principal should be allowed; and *while Administrator Gorman and the heirs had twelve months in which to appeal,* no appeal was taken by them from the action of the probate court in allowing the credits claimed by the sureties for their principal, and *no direct proceeding,* either by bill or cross-bill has been instituted by them to impeach the action of the probate court in allowing those credits.

We are of opinion, therefore, that the judgment of the probate court in the allowance of those credits is conclusive, and *the only question properly before the chancery court was whether the probate court had the power and authority to charge Administrator Featherstone with* $1,000 *as proceeds of the sale by the heirs of said residence property.*

This was the only item in the settlement of January. 1900, which was attacked by Edward Bonner in his bill in the chancery court, and we think Bonner would have been entitled to a decree in his favor on bill and answer.

But evidence was filed by both parties to the lawsuit

Plaintiff filed the depositions of two witnesses and some documentary evidence, while the defendants filed the depositions of six witnesses, three of whom had

an interest in said estate, to-wit: Mrs. Winsett ½, Mrs. McMillan 1-36 and W. L. Sellers 1-36.

The other three witnesses for defendants were W. E. Jett, S. M. Bigham, and Walter Gorman, an attorney of record.

Mrs. McMillan testified that she had gotten only $25 for her interest in the residence property, which was all she had ever received from the estate of her great-aunt (Tr., p. 72).

But in the deed she signed she acknowledged the receipt of $27.75, which was the full value of her interest in said residence (Tr., p. 4).

W. L. Sellers testified that he had received nothing from his great-aunt's estate (Tr., p. 67).

But the bill states, and the answer does not deny, that the interest of W. L. Sellers in said residence property was sold by his guardian, W. E. Jett, to Mrs. Williams for $30 cash in hand paid, and the deed was executed December 30, 1893, (Tr., p. 4).

The testimony of the other witnesses for defendants will be referred to hereafter.

The principal witness for the plaintiff was Mr. L. P. Featherstone, the first administrator, who was a railroad official in Texas when his deposition was taken at Galveston on August 21st and 22nd, 1900, and it clearly shows that he did not owe the Cole estate anything as administrator when he left the State of Arkansas.

Among other things, in his deposition, Mr. Featherstone said:

"The residence or homestead property was sold to Mrs. Eddie C. Williams by the heirs. *The purchase price was paid to the heirs,* some of them directly and to some of them through me as their agent. *The*

papers were not signed by most of them until they had already been paid. Sheriff W. E. Williams, who was representing his wife (the purchaser) looked after the details in this matter, and saw to the signatures being correct, and to satisfactory settlements being made with all the parties. * * * I was acting as agent for some of the heirs in the sale of the homestead, and in order to close up the matter and accommodate the legatees, I caused my wife to buy and pay for the interest of Farley and wife, and Wilkins and wife. I was guardian for young Sellers. I think also represented Brooks and wife. *The money derived from the sale was paid over to those I represented either before or immediately after the consummation of the sale,* either paid directly to them or to those that they had authorized and empowered to collect same" (Tr., p. 30).

In the conclusion of his examination in chief Mr. Featherstone said:

"I wish to state that in a general way I know that the estate was in debt to me from the day I took charge of it until I left Arkansas. My business here has been so urgent that I have not been able to return to secure full data, and the statement which I now supply does not give me credit for all the payments made by me" (Tr., p. 34).

By reference to the deeds from Farley and wife, and Wilkins and wife, to Mrs. Featherstone it will be seen that she paid an aggregate of $240 for their interests in all the lands of said estate, they being entitled to one-twelfth each (Tr., pp. 62-63).

No credit for this $240 was claimed by the sureties for their principal in the settlement account which they filed for him (Tr., p. 49).

Neither did they claim any credit for him for the amounts received by W. L. Sellers, Mrs. Ida McMillan and Mrs. Winsett (Tr., p. 49).

But they ought to have claimed credit for him in said settlement account for the $350 paid by him to Mrs. Winsett, and for which she executed her receipt to him as administrator, dated June 26, 1894 (Tr., p. 21).

Mr. Featherstone says in his deposition that he was entitled to this credit as administrator (Tr., p. 32).

On the other hand, Mrs. Winsett says that $350 was paid by Mr. Featherstone on account of her interest in the residence property (Tr., p. 79).

But more than a year before the date of that receipt she executed a deed to Mrs. Williams, dated May 29, 1893, for her one-half interest in said residence property, "in consideration of the sum of five hundred dollars, to me cash in hand paid, by Eddie C. Williams" (Tr., p. 58).

The deposition of Mrs. Winsett further shows that her son-in-law, Mr. Bigham, acted as her agent in relation to the Cole estate and attended to all the correspondence (Tr., p. 80).

Mr. Bigham admits this to be true, but his deposition throws no light on the two receipts signed by Mrs. Winsett.

In the 6th interrogatory propounded to Mr. Bigham he was asked to state the substance of his correspondence with Mr. Featherstone as near as he could, and if he had any letters that Featherstone wrote him in relation to their business to attach them to his deposition (Tr., 81).

But Mr. Bigham carefully avoided making any answer to this part of said interrogatory (Tr., 81).

This is a very significant fact, because Mr. Featherstone shows in his deposition, which was taken first,

that he acted as agent for some of the heirs in the sale of the homestead, *but not as agent for Mrs. Winsett* (Tr., p. 34).

Her deed to Mrs. Williams was dated May 29, 1893, and Mr. Featherstone remained in St. Francis county, Arkansas, until sometime in 1895, and yet no suit was brought against him by Mrs. Winsett or any of the heirs of said estate, which indicates that they had no complaint to make.

Only two other depositions filed for defendants remain to be noticed. The deposition of W. E. Jett, (whose wife was a niece of Mrs. Cole), and the argumentative deposition of Walter Gorman, the attorney of Henry P. Gorman, administrator in succession.

Mr. Jett is one of the insolvent sureties of Admr. Featherstone. He was not made a defendant to the suit in the Circuit Court, and much of his testimony was objected to as incompetent and irrelevant.

He says he was present at the trial in the Probate Court; *that he was not sworn as a witness;* and that he did not remember that any one except himself was asked "concerning the money for the sale of the Cole residence" (Tr., pp. 69, 70).

Mr. Jett also says that he had received from Mr. Featherstone a total of $105.90 (Tr., p. 68), but the latter says he paid to Lola B. Jett $177.50 (Tr., p. 32).

It also appears that in his examination in chief Mr. Jett said nothing about his $92 claim which the report of Admr. Gorman shows was paid by Featherstone (Tr., p. 43), and for which he should have had credit in the settlement account filed by his sureties, as well as for the $44 paid by Grobmyer to Lutz (Tr., p. 29).

Nearly all of Mr. Walter Gorman's deposition was objected to as incompetent or irrelevant.

He undertook to tell what occurred on the trial in

the Probate Court; what he says he heard Judge Taylor say, and what Mr. Fizer had said in a conversation with him before he left St. Francis county and went back into the Methodist ministry.

Plaintiff had two witnesses, L. P. Featherstone and J. R. Beasley.

Mr. Beasley said in his deposition that he was the attorney of the sureties, Bonner and Coffey, in the Probate Court and came to Arkansas on March 20, 1899; that *Admr. Featherstone was not present in person or by attorney;* that not a word was said in his presence about the deeds the heirs had made to Mrs. Williams; that he never found out until about a week after the trial that those deeds were on the books in the recorder's office; that his partner, Mr. N. B. Fizer, quit the practice of law about the 1st of December, 1899; that Admr. Featherstone never sold the residence property under an order of the Probate Court; that in the settlement account filed by said sureties their principal was debited with $1,152 and credited with $1,175.57, and that a careful comparison of said settlement account with the order of the court will show that all or nearly all of said credits were allowed (Tr., pp. 24, 49, 55).

The Chancery Court tried the case upon its merits and decided it in favor of plaintiff.

The Chancellor held that the item in the settlement made by the Probate Court in January, 1900, charging Admr. Featherstone with $1,000 for the residence property sold by the heirs in 1893, and *not* by him as administrator under an order of the court, was void and fraudulent as against his sureties (Tr., p. 83).

It was also held by the Chancellor that the judgment of the Circuit Court was no bar to the relief prayed for by Bonner in the bill of complaint in the Chancery Court, and a perpetual injunction was granted (Tr., p. 84).

The Supreme Court, on appeal from that decree, did not deny that the Probate Court judgment was void and fraudulent, but held that the judgment of the Circuit Court was an estoppel, and for this reason that Bonner was not entitled to relief in the Chancery Court (Tr., p. 99).

In the action at law the Supreme Court of Arkansas held that the sureties could not in a court of law attack a judgment against their principal and had no remedy except in equity; and when one of them filed a bill in equity the Supreme Court said he had no right to do so, and cited authorities to show that he should have set up all his defenses when he was sued in the Circuit Court.

It was a very remarkable opinion, because the Supreme Court said Bonner ought to have done *what it admits he did do.*

After stating that the Chancellor held the judgment of the Probate Court to be *void and fraudulent,* the Supreme Court said:

> "But it does not follow because the judgment in the Circuit Court was based on a void or fraudulent judgment of the Probate Court that it is also either void or fraudulent. When these parties were sued in the Circuit Court they should have set up any defense they had against such action whether the same was legal or equitable. * * * It is true that Bonner, the plaintiff in this action to enjoin the judgment at law against him, did undertake to set up the same matters on which he bases his right to relief here as a defense to the legal action" (Tr., pp. 99, 100).

A petition for rehearing was overruled, and the Supreme Court directed the Chancellor to dissolve the injunction and dismiss the bill (Tr., p. 100).

This command was obeyed by the Chancellor, whereupon the case was carried back to the Supreme Court by Bonner and the surety on his injunction bond (Tr., pp. 109, 110).

The attorneys for the other side then filed a motion to advance and affirm as a delay case (Tr., p. 113).

In reply to that motion, appellants filed a response in opposition thereto, and averred "that in said action at law the sureties of Admr. Featherstone were not allowed to have a trial upon the merits of a sufficient defense, either in the Circuit Court or in the Supreme Court, which was refused in both courts upon the ground that the sureties could not in a court of law attack a judgment against their principal;" that the "due process" clause in Section One of the 14th Amendment to the Constitution of the United States, and the Act of Congress of April 20, 1871, were violated by said Circuit Court; and that the same disregard of said 14th Amendment and Act of Congress which made the judgment of the Circuit Court a nullity, affected also the judgments of the Supreme Court, and the judgment of the Chancery Court upon said mandate, and rendered them all invalid (Tr., p. 116).

Nevertheless the motion to advance and affirm was granted, the court refusing to consider the federal question; and, in delivering its opinion, the court said:

> "The only question in the case is whether the decree is in conformity to the mandate of this court. * * * It is evident from the record that the appellant has brought this case here in order to seek a writ of error to the Supreme Court of the United States. It will be with the Chief Justice to decide whether there is a federal question therein" (Tr., p. 121).

The Chief Justice of the Supreme Court of the State allowed the writ of error (Tr., p. 128).

SPECIFICATION OF ERRORS.

I.

The evidence showed that the sureties were not allowed to have a trial upon the merits in the action at law.

It was therefore error in the Supreme Court of Arkansas to reverse the first decree of the Chancery Court and direct the Chancellor to dismiss the bill and dissolve the injunction upon the ground that relief in Chancery was barred by the judgment of the Circuit Court.

II.

The evidence showed that the Circuit Court refused to consider the merits of the sufficient defense set up by the sureties in their answer and cross-complaint.

It was therefore error in the Supreme Court of Arkansas to hold that the void judgment of the Circuit Court was an estoppel to the suit in Chancery.

III.

The evidence showed that the judgment of the Circuit Court against the sureties was based upon the

judgment of the Probate Court against their principal, the first administrator, and that said judgment of the Probate Court was void and constructively fraudulent.

It was therefor error in the Supreme Court of Arkansas to hold that said void judgment of the Probate Court against said administrator could be and was the basis of a valid and binding judgment of the Circuit Court against said sureties.

IV.

The Supreme Court of Arkansas erred in holding that said sureties, after being denied a hearing upon the merits in the Circuit Court, had no right to file a bill in Chancery and attack the void and fraudulent judgment of the Probate Court against their principal, because:

(*a*) Said Probate Court charged him as administrator in a settlement account with $1,000 as proceeds of the sale of the residence property of his intestate which was not sold by him as administrator under an order of the court.

(*b*) The question of making said charge against him as administrator was not an issue raised by the pleadings in the Probate Court.

V.

The Supreme Court of Arkansas erred in holding that while the Circuit Court refused to consider the merits of the defense set up by the sureties, they were bound nevertheless by its judgment and ESTOPPED *from seeking relief in equity, because:*

(*a*) No plea of *res adjudicata* was filed by defendants in the chancery court.

(*b*) It was not shown by evidence that the question presented in the suit in equity had been determined upon its merits in the action at law.

VI.

The Supreme Court of Arkansas erred in affirming the second decree of the chancellor upon its mandate which violated the due process clause of section one of the 14th Amendment to the Constitution of the United States and denied to the plaintiff a hearing upon the merits, because:

(*a*) The bill in equity expressly states and the answer thereto does not deny, that the demurrer to the answer and cross-complaint of the sureties in the action at law was sustained by the circuit and Supreme courts, and judgment was entered against the sureties *without a trial upon the merits,* which was refused upon the ground that the sureties could not in a court of law attack a judgment against their principal.

(*b*) The plaintiff in the equity suit appealed to the Supreme Court of the State from the decree of the chancellor upon the mandate, and stated, in his response to the motion to advance and affirm, that he had not been permitted to have a trial upon the merits, either at law or in equity, and that such procedure was in violation of the "due process" clause in section one of the 14th Amendment to the Constitution of the United States and the Act of Congress of April 20, 1871, enacted to enforce it.

BRIEF.

THE FEDERAL QUESTION.

We do not think there can be any reasonable doubt of the existence of a federal question in this case.

Evidently the Chief Justice of the Supreme Court of Arkansas was of this opinion, because he allowed the writ of error (Tr., 128).

But whether there is a federal question or not will be determined by the U. S. Supreme Court for itself upon an examination of the record.

> *Freeland vs. Williams,* 131 U. S., 405.
> *Davidson vs. New Orleans,* 96 U. S., 97.

The Supreme Court of Arkansas having denied to Edward Bonner a right or privilege existing under the Constitution of the United States, the U. S. Supreme Court has jurisdiction to review the judgment of the Supreme Court of said state.

> *Boyd vs. Thayer,* 143 U. S., 135.

> "Raising the federal question for the first time in the appellate state court, if it be there considered, *or necessarily involved in the decision,* gives the right of review in this court."
>
> *R. R. Co. vs. Elliott,* 184 U. S., 530.

> "All that is essential is that the federal questions must be presented in the state court in such a manner as to bring them to the attention of that tribunal." *Ibid.*

DUE PROCESS OF LAW.

It clearly appears that Edward Bonner was denied due process of law both at law and in equity.

Due process of law signifies a right to be heard in one's defense.

Hovey vs. Elliott, 167 U. S., 446.
Windsor vs. McVeigh, 93 U. S., 274.
R. R. Tax Cases, 13 Fed., 722.

"It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound *until he has had his day in court,* by which is meant, until he has been duly cited to appear and has been afforded an opportunity to be heard."

Galpin vs. Page, 18 Wallace, 350.

In every *judicial* proceeding a fair trial is an indispensable element of due process of law.

Davidson vs. New Orleans, 96 U. S., 97.

"Due process of law simply requires that a person should be brought into court *and have an opportunity to prove any fact for his protection.*"

People vs. Essex Co., 70 N. Y., 229.

"It implies the right of the person affected thereby to be present before the tribunal which pronounces judgment, to be heard by testimony or otherwise, and to have the right to controvert by proof any material facts which bear on the question of right; and *if any question of fact or liability is conclusively presumed against him,* it is not due process of law."

Ziegler vs. R. R. Co., 58 Ala., 594.
Wilburn vs. McCally, 63 Ala., 436.

"By due process of law is meant one which, following the forms of law, is appropriate to the case and *just to the parties to be affected.* It must be pursued in the ordinary mode prescribed by the laws, and it must be adapted to the end to be attained; and it must give to the party to be affected *an opportunity of being heard respecting the justice of the judgment sought.* Without these elements entering into the proceeding it would be anything but due process."

The R. R. Tax Cases, 13 Fed., 722.

"No judgment of a court is due process of law if rendered without jurisdiction in the court."

Scott vs. McNeal, 154 U. S., 34.

THE MERITS.

The Supreme Court of Arkansas erred in commanding the chancellor to dissolve the injunction and dismiss the bill, and erred in affirming the decree of the chancellor upon said mandate.

A court of equity will grant appropriate relief to prevent the enforcement of a judgment which it would be against conscience to execute.

Rolling Mill Co. vs. Ore and Steel Co., 152 U. S., 596.
Michels vs. Olmstead 157 U. S., 198.
Story's Eq. Juris., sec. 885.

The contract of a surety is to be construed strictly, and is not to be extended beyond the fair scope of its terms.

Miller vs. Stewart, 9 Wheat, 680.
Leggett vs. Humphreys, 21 How., 66.

"A surety may show that a judgment against his principal was obtained by fraud, or *that the court had no jurisdiction to render the judgment.*"

12 Amer. & Eng. Ency. of Law, pp. 99 and 100.
Citing 140 Mass., 488.

"Though the court may possess jurisdiction of a cause, of the subject matter, and of the parties, it is still limited in its modes of procedure and in the extent and character of its judgments."

Windsor vs. McVeigh, 93 U. S., 274.

"If it act without authority, its judgments and orders are nullities; they are not voidable, but simply void."

Elliott vs. Piersoll, 1 Peters, 328.

It also appears that:

"Jurisdiction may be in the court over the cause, but there may be an excess of jurisdiction asserted in its judgment."

Williamson vs. Berry, 8 How., 495.

In that case of *Williamson vs. Berry,* which was an action of ejectment in a Federal Court, it was held by the U. S. Supreme Court that an order made by Chancellor Kent (which had been affirmed by the Supreme Court of New York in two cases), was void, because *"It was not an exercise of jurisdiction, but an order out of and beyond it."*

Like the order of the probate court now in question.

It was also held by the U. S. Supreme Court, in the case just mentioned, that:

"The jurisdiction of any court exercising authority over a subject may be inquired into in every other court, when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceedings."

Williamson vs. Berry, 8 How., 495.

There can be no doubt that:

"A judgment rendered without jurisdiction is void, and may be attacked collaterally in any proceeding in which its validity may be called in question. *It is clearly within the jurisdiction of courts of equity to enjoin or vacate such judgments."*

Fallansbee vs. Mortgage Co., 7 Ill. App., 486.

It was argued in the case of *Williamson vs. Berry,* 8 How., 495, that if the chancellor had made a mistake in his decree it was merely an error correctable only on appeal, but in answer to this argument the U. S. Supreme Court said there is no necessity for an appeal from a judgment or decree which is void.

"The sureties of an executor or administrator are only liable for his misconduct in the performance of his duties as executor or administrator. *If he acts as an agent for the heirs,* or as a trustee, and a loss occurs, his sureties will not be liable."

24 Amer. & Eng. Ency. of Law, 867; citing:
Shields vs. Smith, 8 Bush, (Ky.) 601.
Reeve vs. Steele, 2 Head, (Tenn.) 647.
Cluff vs. Day, 55 N. Y., Sup. Ct., 460.
State vs. Anthony, 30 Mo. App., 638.
Hebert vs. Hebert, 22 La. An., 308.
Roper vs. Burton, 107 N. Car., 526.

The case of *Stewart vs. Smiley* is another case which illustrates the limited powers of an administrator.

In that case the Supreme Court of Arkansas said that if an administrator consents to act as agent of the heirs for the collection of rents due to them, that *"this consent cannot add anything to his official capacity,"* and that even if the heirs also consented for the rents to be paid to him, *"it would confer no power on the administrator as such,"* and he would be merely their agent as to this transaction and nothing more.

Stewart vs. Smiley, 46 Ark., 373.

It has also been held by the Supreme Court of Arkansas, that

> *"Alleged fraudulent dealings of an executor with the lands of an estate are wholly outside of the jurisdiction of a court of probate."*

Hankins vs. Layne, 48 Ark., 544.
Clark vs. Shelton, 16 Ark., 474.

And in another case, *Pike vs. Thomas,* it was held that "The probate court has no power to render and enforce a judgment against the administrator for an individual liability," and *that the circuit court had no jurisdiction to render the judgment which was based on the void judgment of the probate court.*

Pike vs. Thomas, 62 Ark., 223.

The judgment of the Circuit Court of St. Francis County against Bonner and Coffey, sureties of Admr. Featherstone, *was not a decision upon the merits* and therefore it was not a bar to the subsequent suit brought by Edward Bonner in the chancery court.

Hughes vs. United States, 4 Wallace, 232.
Deloach Co. vs. Mill Co., 65 Ark., 467.
Story's Eq. Juris., sec. 887.
1 Greenleaf's Evidence, sec. 530.

When a surety tenders his plea at the proper time and is refused the benefit of it, and is guilty of no laches, he is entitled to relief by bill in equity.

Leggett vs. Humphreys, 21 How., 66.
Rolling Mill Co. vs. Ore Co., 152 U. S., 596

"If a surety brings his defense forward in an action at law, and it be overruled under the idea that it is no defense at law, it is not granting a new trial for a court of equity to afford relief, notwithstanding the trial at law."

King vs. Baldwin, 17 Johnson, (N. Y.) 384.

The Circuit Court of St. Francis County violated the "due process" clause in section one of the 14th Amendment to the Constitution of the United States by denying said sureties the right to attack in their answer and cross-complaint the void judgment of the probate court against their principal; the statute expressly providing that *"The defendant may set forth in his answer as many grounds of defense, counter-claim and set-off, whether legal or equitable, as he shall have."*

Kirby's (Ark.) Digest, sec. 6098.

Said statute further provides that actions may be dismissed upon five different grounds without prejudice to a further action, but *"In all other cases, upon the trial of the action, the decision must be upon the merits."*

Kirby's (Ark.) Digest, sec. 6167.

And the Supreme Court of Arkansas has expressly said:

> "Where an equitable defense is set up to a proceeding at law, either party may have the case transferred to the equity side of the docket; but if this be not done, the issue made on such defense *is not to be disregarded,* and such issue *must* be disposed of by the court according to the principles involved, either of law or equity."
>
> *Truelock vs. Taylor,* 26 Ark., 54.

Speaking of the equitable rights of a defendant under the new system, in an action at law, the U. S. Supreme Court said:

> "The answer or plea in such case is in the nature of a bill in equity and should contain all its essential averments. The defendant then becomes, with reference to the matters averred by him, an actor, and seeks by the equities presented to estop the plaintiff from prosecuting the action."
>
> *Gibson vs. Choteau,* 13 Wallace, 92.

The circuit court having refused to consider the sufficient defense set up in the answer and cross-complaint of the sureties, *its judgment was void for want of jurisdiction,* because "there is no difference in principle between refusing to consider the merits of a sufficient defense and striking the pleading containing such defense from the files."

> *Hovey vs. Elliott,* 167 U. S., 446.
>
> "Jurisdiction is the right to hear and determine; not to determine without hearing."
>
> *Windsor vs. McVeigh,* 93 U. S., 274.

The Supreme Court of Arkansas has held in a number of cases that a collateral attack can be made upon a judgment which is void for want of jurisdiction.

Waggener vs. Lyles, 29 Ark., 47.
Guynn vs. McCauley, 32 Ark., 97.
Myrick vs. Jacks, 33 Ark., 425.
Summers vs. Howard, 33 Ark., 490.
Meyer vs. Rousseau, 47 Ark., 460.
Falls vs. Wright, 55 Ark., 562.
Collins vs. Lumber Co., 74 Ark., 81.
Grimmett vs. Askew, 48 Ark., 151.
Greenstreet vs. Thornton, 60 Ark., 369.

The first seven of the nine cases just mentioned involved collateral attacks on judgments of probate courts.

The next case, *Grimmett vs. Askew*, 48 Ark., 151, was a collateral attack on a judgment of the county court; and *Greenstreet vs. Thornton*, 60 Ark., 369, was a collateral attack on a judgment of the circuit court.

All of these collateral attacks on so-called judgments were sustained by the Supreme Court of Arkansas, and in the last mentioned case it said:

> *"A void judgment or decree is a mere nullity, and has no force, either as evidence or by way of estoppel."*
>
> *Greenstreet vs. Thornton*, 60 Ark., 369.

The doctrine of the U. S. Supreme Court on this subject is as follows:

> "Want of jurisdiction may be shown either as to the subject matter, or the person, or, in proceedings *in rem*, as to the thing;" and "the record may be contradicted as to jurisdictional facts asserted therein, and especially as to facts stated to have been passed upon by the court."
>
> *Thompson vs. Whitman*, 18 Wallace, 457.

The question of charging Admr. Featherstone with $1,000 as proceeds of the sale by the heirs of the residence property *was not an issue raised by the pleadings in the probate court,* and therefore the judgment of said court against him for $991.28 was void for want of jurisdiction.

Reynolds vs. Stockton, 140 U. S., 254.
Falls vs. Wright, 55 Ark., 562.

Said judgment of the probate court was void for the additional reason that said residence property was not sold by Admr. Featherstone under an order of the probate court, the principle being well established that:

> "The authority of an administrator to sell the property of his intestate *is derived solely from the probate court;* and, except on the order of that court, he has no power over real estate or its proceeds."
>
> Redfield's L. & P. of Surrogate Courts, p. 503.
> *Stewart vs. Smiley,* 46 Ark., 373.
> *Mays vs. Rogers,* 37 Ark., 155.
> *Tate vs. Norton,* 94 U. S., 746.

> "The power to sell real estate, independently of that which may be given by the probate court for the payment of debts and legacies, is a trust power, differing from that which properly belongs to the executor or administrator."
>
> *White vs. Ditson,* (Mass.) 4 N. E. Rep., 606.
> *Probate Court vs. Hazard,* 13 R. I., 3.

In both of the cases cited to sustain the last proposition it was held that the sureties were not liable for the proceeds of real estate sold by the executor under a power in the will.

> "Where executors hold a fund, not in their character as executors, but as trustees, *they cannot be called to account before the surrogate* in relation to the execution of the trust."

Re Van Wyck, 1 Barbour (N. Y.) Ch. 565.

It is not true that a surety is concluded by the judgment of a probate court against his principal.

The case in 10th Wallace, 583, cited in 24 Amer. & Eng. Ency. of Law, 864, does not sustain that doctrine.

In that case the U. S. Supreme Court said:

> "There may be special defenses for a surety arising out of circumstances not existing in this case, but in their absence, whatever concludes his principal as an obligor concludes him."

Stovall vs. Banks, 10 Wallace, 583.

It is well settled that the judgment of any court may be impeached for fraud or want of jurisdiction.

Cornett vs. Williams, 20 Wallace, 250.

These are recognized exceptions to the conclusiveness of judgments, and no appeal is necessary from a void judgment or decree.

> "The rule is, that where a limited tribunal takes upon itself to exercise a jurisdiction which does not belong to it, *its decision amounts to nothing*, and does not create a necessity for an appeal."

Williamson vs. Berry, 8 How., 495.

> "And all courts, even the highest, are more or less limited in their jurisdiction."

Windsor vs. McVeigh, 93 U. S., 274.

The bill attacks only one item in the probate court settlement of Jan. 29, 1900, as being beyond the jurisdiction of the court; and the U. S. Supreme Court has always sustained collateral attacks on judgments void for want of jurisdiction.

Thompson vs. Whitman, 18 Wallace, 457.
Boswell vs. Otis, 9 How., 336.
Williamson vs. Berry, 8 How., 495.
Lessee vs. Stewart, 3 How., 750.
Elliott vs. Piersall, 1 Peters 328.

In the case of *Pennoyer vs. Neff,* a collateral attack on the judgment of a state circuit court in Oregon was sustained by the U. S. Supreme Court, and in that case the court said:

"The judgment, if void when rendered, will always remain void."

Pennoyer vs. Neff, 95 U. S., 714.

Inasmuch, therefore, as the judgment of the Probate Court of St. Francis County was void when rendered, it will always remain void, and all other judgments based upon it are void also.

Scott vs. McNeal, 154 U. S., 34.
Pike vs. Thomas, 62 Ark., 223.
Clark vs. Shelton, 16 Ark., 474.

ARGUMENT.

The Supreme Court of Arkansas appears to have been of opinion in the equity suit that the judgment of the circuit court in the action at law against the sureties of Admr. Featherstone was valid, binding and conclusive, *because it was the judgment of the circuit court,* and the fact that it was based on the void judgment of the probate court made no difference whatever (Tr., 96).

But the writer of that opinion, on another occasion, in the case of *Greenstreet vs. Thornton,* 60 Ark., 369, said:

> *"A void judgment or decree is a mere nullity, and has no force, either as evidence, or by way of estoppel."*

We do not see, therefore, how a valid, binding and conclusive judgment of a circuit court could be based on a void judgment of a probate court, when the defense tendered in the circuit court is overruled under the idea that it is no defense at law.

It is evident, from an examination of the authorities cited in the brief, that in every judicial proceeding *"a fair trial"* is an indispensable element of due process of law; and "If any question of fact or liability is conclusively presumed against a defendant it is not due process."

This is a very important point, because the Cir-

cuit Court of St. Francis County conclusively *presumed* the liability of Edward Bonner and W. H. Coffey on the void judgment of the probate court against their principal, Admr. Featherstone; and the chancery court, upon the mandate of the Supreme Court, conclusively *presumed* the liability of said Bonner on the void judgment of the circuit court against him and his co-surety, W. H. Coffey.

We do not think there can be any reasonable doubt that the judgment of the probate court against Admr. Featherstone for $991.28 was void, because:

(*a*) The question of the liability of Admr. Featherstone for the proceeds of the sale of the residence property by the heirs *was not an issue in the pleadings in the probate court*, and therefore that court had no jurisdiction over this question. *Falls vs. Wright*, 55 Ark., 562; *Hovey vs. Elliott*, 167 U. S., 446.

(*b*) Said residence property *was not sold by Admr. Featherstone under an order of the probate court*, as a sale of it by him was not necessary for the payment of debts, and he could not be charged legally as administrator with the proceeds of said residence property which was sold by the heirs, and the deeds executed by them, in which they acknowledged the receipt of the purchase money.

And we do not think there can be any reasonable doubt that the judgment of the circuit court against two of the sureties of Admr. Featherstone was void also, because:

(*a*) *There was no evidence to support it*, the void judgment of the probate court, which plaintiff (Admr. Gorman) relied upon as evidence, being a mere nullity, and having no force, either as evidence or by way of estoppel. *Greenstreet vs. Thornton*, 60 Ark., 369.

(*b*) *The circuit court deprived itself of its jurisdiction over the case* by refusing to consider the merits of the sufficient defense set up by the sureties in their answer and cross-complaint. *Hovey vs. Elliott*, 167 U. S., 446.

It is well settled that no appeal is necessary from a judgment which is void for want of jurisdiction; and therefore it was not necessary for the sureties of Admr. Featherstone to appeal from the void judgment of the probate court against him; nor was it necessary for him to take an appeal to the circuit court.

Williamson vs. Berry, 8 Howard, 495.

The old rule in Arkansas in relation to the settlement of an administrator's account was as follows:

> "So far as the settlement with the probate court was made *touching matters within its jurisdiction*, it was, unless set aside for fraud by a direct proceeding in chancery, conclusive."
>
> *Clark vs. Shelton*, 16 Ark., 474.

In that chancery case the appellant relied upon a judgment of a probate court as conclusive, and upon a judgment of a circuit court as an estoppel. These questions were fought over by the attorneys in their briefs, but the judgment of the circuit court appears to have cut no figure in the decision of the case. The Supreme Court held that the judgment of the probate court was void, and said it was not necessary to investigate the question of fraud over which the probate court had no jurisdiction.

That case was decided in 1855. Since that time the Legislature established a new code of practice, which went into effect on Jan. 1st, 1869. Under the new system, if the sureties of an administrator were

sued in the circuit court to enforce a judgment of the probate court against their principal, they would have the right to set up all their defenses, both legal and equitable, in their answer, because the statute expressly says:

> "The defendant may set forth in his answer as many grounds of defense, counter claim and set off, *whether legal or equitable,* as he shall have."
>
> Kirby's (Ark.) Digest, sec. 6098.

The object of that statute, our Supreme Court has said, was "to compel parties to litigate the whole controversy between them in one action."

The words of the court are clear and positive:

> *"A defendant must make all of his defenses, of whatsoever nature they may be, in the action in which he is sued."*
>
> *Reeve vs. Jackson,* 46 Ark., 272.
> *Nichols vs. Shearon,* 49 Ark., 75.

> "The effect of all this," the court said, "is practically to modify, and, to a certain extent, render obsolete the ancient jurisdiction of equity over proceedings at law."
>
> *Reeve vs. Jackson,* 46 Ark., 272.

Both of the cases just referred to grew out of sales of real estate *made by administrators under orders of the probate court.* The purchasers at those sales brought actions of ejectment in the circuit court. The heirs or legatees of the decedents set up all their defenses in those actions at law and then filed bills in equity to litigate the same matters again. *Both bills were dismissed by the court;* the reason stated

for dismissing the first being that plaintiff had his day in court when sued in the action at law and that the defense set up by him at law and in equity *"was not a substantial defense."* And in the other case—*Nichols vs. Shearon*—the Supreme Court said "The bill was confessedly a mere mode of defense to the action of ejectment, its object being to control the proceedings in that case. But parties cannot litigate about the same subject matter both at law and in chancery at one and the same time. *The whole controversy must be brought out in one suit."*

Nichols vs. Shearon, 49 Ark., 75.

So it clearly appears that when Bonner and Coffey were sued by Admr. Gorman in the circuit court they were compelled to set up all their defenses in that court, *which they did in their answer and cross-complaint,* and it will be seen that the defense set up by them was radically different from that which was relied upon by the defendants in the circuit court in the two cases just mentioned.

In both of those cases the question was whether a sale of real estate *made by an administrator under an order of the probate court was valid.*

But in the case of Admr. Gorman against Bonner and Coffey in the circuit court the defense relied upon by defendants was that the judgment of the probate court against their principal, Admr. Featherstone, for $991.28 was void and fraudulent because the probate court had no right to charge him with $1,000 as proceeds of the sale of the residence property of his intestate, *which was not sold by him under an order of the probate court,* but which was sold by the heirs themselves, who executed deeds to the purchaser and acknowledged therein the receipt of the purchase money.

Surely, that was a substantial defense; and this fact was not denied by the circuit or Supreme Court.

In the action at law the judgment of the circuit court was expressly sustained by the Supreme Court upon the ground that the answer of the sureties, Bonner and Coffey, was *"a collateral attack"* upon the judgment of the probate court, and that:

> "The judgment of the probate court will be *presumed* to be correct, unless corrected for error on appeal, *or other direct proceeding.*"
>
> *Bonner vs. Gorman,* 71 Ark., 480.

Under these circumstances (Coffey being dead) no other course was left for Bonner but to file a bill in chancery, and he had no reason to suppose that the Supreme Court of the state would deny to him a trial upon the merits in the equity suit and decide the case upon an issue not in the pleadings.

But this is what it did, notwithstanding the fact that on a former occasion it had said:

> "Where the parties elected in the court below to try the case upon a certain issue, they cannot on appeal try it upon a different issue."
>
> *American Mortgage Co. vs. Milam,* 64 Ark., 305.

And again, it had said:

> "It would be an injustice to parties litigant to adjudicate their rights upon issues that were never raised in the court below."
>
> *Radcliff vs. Scruggs,* 46 Ark., 96.

The Supreme Court of Tennessee, being urged to decide a lawsuit upon an issue not raised in the pleadings, said:

"We are aware of no rule of pleading upon which we can hold that a plea in bar is good upon a ground different from that stated in the plea."

Marks vs. Borum, 1st Baxter, 94.

But nevertheless the Supreme Court of Arkansas held that the judgment of the circuit court was an *estoppel* to the suit in equity, and proceeded to reverse the decree of the chancellor, and decide the case *upon an issue not raised by the pleadings,* notwithstanding the fact that such procedure on the part of a lower court would render its judgment void.

Hovey vs. Elliott, 167 U. S., 446.
Falls vs. Wright, 55 Ark., 562.

It appears that the Supreme Court of the state knew it was deciding the lawsuit upon a different ground from the one relied on by the defendants because Judge Riddick, in delivering the opinion of the court, said:

"Counsel for appellants have labored to show that the judgment of the probate court was substantially correct by reason of the fact that the court, *while it made an improper charge against the administrator,* also allowed him improper credits" (Tr., 96).

It was not pretended that counsel for appellants labored to show that the judgment of the circuit court was an estoppel.

If they had relied upon such a defense as that they would have filed a plea of *res adjudicata,* but no such plea was filed.

It was settled long ago in Arkansas that

"An estoppel must be pleaded."

Gaines vs. Bank, 12 Ark., *769.*

And in *Deloach vs. Mill,* 65 Ark., 467, the Supreme Court said:

> "In order that a judgment may constitute a bar to another suit, it must be rendered in a proceeding between the same parties or their privies, and the point of controversy must be the same in both cases, *and must be determined on its merits. Hughes vs. United States,* 4 Wall.. 236. It must either appear on the face of the record or be shown by extrinsic evidence that *the precise question* was raised and determined in the former suit."
>
> *Deloach vs. Mill,* 65 Ark., 467.

But there is no evidence in the record to show that the judgment of the circuit court was a decision upon the merits, or that the question presented by the pleadings in equity was determined in the action at law.

The bill expressly states that a trial upon the merits was refused by the circuit court and by the Supreme Court upon the ground that the sureties could not in a court of law attack a judgment against their principal.

This allegation of the bill was not denied; and if the defenses relied upon by Bonner in his answer and cross-complaint in the circuit court were no defense at law, then surely he was entitled to a remedy in equity.

There can be no doubt about the correctness of this proposition.

In the case of *Rolling Mill Co. vs. Ore and Steel Co.,* the U. S. Supreme Court said:

"It is well established that equity will entertain jurisdiction and afford relief against the collection of a judgment where, in justice and good conscience, it ought not to be enforced, as where there is a meritorious equitable defense thereto, which could not have been set up at law, or which the party was, without fault or negligence, prevented from interposing."

Rolling Mill Co. vs. Ore and Steel Co., 152 U. S., 596.

Another case which illustrates this principle is the case of *Michels vs. Olmstead*. In that case an equitable defense to an action at law was rejected, whereupon the defendant brought suit in equity to enjoin the action in the court of law, and the U. S. Supreme Court, on the appeal of Michels, said:

"If the evidence was inadmissible at law, *which he is estopped to deny*, it was certainly admissible in equity to prevent the accomplishment of what any court of chancery must consider and treat as a fraud."

Michels vs. Olmstead, 157 U. S., 198.

That remark is applicable to the case now before the court, because Bonner's equitable defenses in the circuit court were rejected upon the ground that a surety could not in a court of law attack a judgment against his principal.

The first decree of the Supreme Court in said equity suit was not a final decree because it simply reversed the decree of the chancellor and commanded him to dissolve the injunction and dismiss the bill.

When this was done, Bonner carried the case back

to the Supreme Court of the state by appeal to get a final decree by that tribunal, in order that he might take the case by writ of error to the U. S. Supreme Court for review, in accordance with the practice in such cases.

U. S. Revised Statutes, sec. 709.
Telegraph Co. vs. Burnham, 162 U. S., 339.
Clarke vs. Clarke, 178 U. S., 186.

And while the equity suit was pending *a second time* in the Supreme Court of the state, Bonner took advantage of the opportunity, in filing his response to appellees' motion, to call the attention of the Supreme Court to the fact that he had not been permitted to have a trial upon the merits either in the action at law or in equity, and that such procedure was not due process of law, and was in violation of the due process clause in section one of the 14th Amendment to the Constitution of the United States.

That statement, however, had no effect on the court, and the decree of the chancellor upon the mandate was affirmed, the Supreme Court refusing to consider the federal question involved in the lawsuit, and refusing to let Bonner have a final decision of his controversy with Admr. Gorman upon its merits even in a court of equity.

But the judgment of the probate court against Admr. Featherstone being null and void, for the reasons heretofore stated, the judgments and decrees of all other courts based upon it were void also.

Scott vs. McNeal, 154 U. S., 34.

That case of *Scott vs. McNeal* was a remarkable case, and it clearly illustrates one of the propositions laid down by the court, to-wit: That "even a judgment in proceedings strictly *in rem* is wholly void if

a fact essential to the jurisdiction of the court did not exist."

That the probate court of St. Francis County had no jurisdiction over said residence property or its proceeds in January, 1900, is as clear, we think, as the noon-day sun on a cloudless day.

At that time the purchaser of said residence property had been in possession of it nearly seven years under deeds executed by the heirs. The debts of the estate had all been paid, and the administrator in succession had hundreds of dollars in his hands. It is evident, therefore, that a sale of said residence property by the first administrator was not necessary for the payment of debts, and the Supreme Court of Arkansas has said:

> "An administrator has no control of his intestate's lands when not needed for the payment of debts."
>
> *Stewart vs. Smiley*, 46 Ark., 373.

The fact that "the payment of debts probated against the estate did not require him to sell the residence of his intestate," and the fact that it had been "disposed of by the heirs," was stated by Admr. Featherstone in his report to the probate court on January 15, 1894. and *that report was approved* by C. F. Hinton, probate judge (Tr., pp. 36-37).

An administrator is under the control of the probate court and a sale of said residence property by Admr. Featherstone under an order of the probate court was *the essential fact* which was necessary to give the probate court jurisdiction in January, 1900, over the proceeds of the sale of said residence property.

But this essential fact did not exist, and therefore the judgment of the probate court was void.

Scott vs. McNeal, 154 U. S., 34.

And it was void for the additional reason that the question of charging Admr. Featherstone with the proceeds of the sale of the residence property by the heirs was not an issue raised by the pleadings in the probate court.

Hovey vs. Elliott, 167 U. S., 446.
Falls vs. Wright, 55 Ark., 562.

In conclusion, we insist that both decrees of the Supreme Court of Arkansas in said equity suit should be reversed; and said State Supreme Court should be directed to affirm the original decree of the chancellor upon the merits, granting the relief prayed by the bill.

Respectfully submitted,

JAMES P. CLARKE,
RUFUS J. WILLIAMS,
J. R. BEASLEY,
Counsel for Plaintiffs in Error.

In the Supreme Court of the United States

OCTOBER TERM, 1907.

No. 348.

EDWARD BONNER AND EDWARD L. BONNER,
PLAINTIFFS IN ERROR,

vs.

HENRY P. GORMAN, ADMINISTRATOR OF THE ESTATE OF MARY A. COLE, DECEASED, ET. AL.,
DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT.

On the 15th day of March, 1893, L. P. Featherstone qualified as administrator of the estate of Mary A. Cole, deceased, in the Probate Court of St. Francis County, Arkansas, with E. Bonner, one of the plaintiffs in Error, as one of the sureties on his bond. (Printed Record 1.)

The personal property of said estate was appraised April 3rd, 1893, at $180.65, and the real estate on Dec. 16th, 1893, at $2100.00 (P. R. 1.)

The heirs of said estate and the interest of each were as follows: Mrs. M. E. Winsett, one-half; Mrs. Jett, one-twelfth; Mrs. Wilkins, one-twelfth; Mrs. J. L. Farley, one-twelfth; Mrs. Brooks, one-twelfth; Mrs. Chapman, one-twelfth; Mrs. McMillen, one-thirty-sixth; Hugh Sellers, one-thirty-sixth; William L. Sellers, one-thirty-sixth. (P. R. 1.)

The claims filed and allowed against the estate amounted to only $249.92. (P. R. 23.)

On Jan. 26th, 1894, the said Featherstone, as administrator, filed his first settlement. (P. R. 23-25.) In this settlement he charged himself with $277.38, as the amount received by him from the sale of the personal property, and takes credit by $164.76 as having been expended by him in the discharge of indebtedness of said estate not probated, and the further sum of $16.47 as commissions, making a total of credits of $181.23, leaving a balance in his hands of $96.15. But he represented to the Court in this settlement, that some of the heirs of said estate had purchased property (personal) at the sale, amounting to the sum of $161.15, and that they desired to receive this amount as a part of their

interest in said estate, which, if the Court allowed, would leave the estate in debt to him in the amount of $64.92.

This is the only settlement that Featherstone ever made, and he moved from Arkansas to Texas in 1895. (P. R. 4.)

Before he had filed his first settlement in the Probate Court as administrator, towit: on the 7th day of Nov., 1893, he obtained an order of said Court for the sale of all the real estate, except the residence in the town of Forrest City, and sold the same on the 16th day of Dec. 1893. The property sold by him at this sale was a store-house in the town of Forrest City, for $700.00, and thirty-three (33) acres of land for $200.00. This sale was reported to the Court Jan. 15, 1894, and approved the same day; but upon the petition of the administrator and with the consent of the purchasers, was on Jan. 25th, 1894, set aside upon the grounds that the records of the Court showed that the personal property was amply sufficient to pay the probated debts, and the Court had no jurisdiction to order the sale of the land. (P. R. 2-3.)

On the same day on which this sale was set aside, the Court made another order for the sale of the same property, and on February 17th, 1894, he,

as administrator, sold the said tract of thirty-three acres of land to Fussell and Taylor for $196.00, and the store house in the town of Forrest City to L. R. Grobmyer for $956.00. From Grobmyer he took two notes for $478.00 each, for the purchase money. He collected the $196.00 from Fussell and Taylor, and one of the Grobmyer notes for $478.00, making a total of $674-00 which went into his hands as administrator from this sale. (P. R. 3.)

Some time after Featherstone left the State and took up his residence in the State of Texas, Henry P. Gorman, the defendant in error, was appointed by the Probate Court of the said county of St. Francis as administrator in succession of said estate, and on February 1st, 1898, filed his first settlement, showing that he had received nothing from the estate except $464.77 from L. R. Grobmyer which was the last payment of purchase money for the store house mentioned above, and shows a balance in his hands on this settlement of $313.26. (P. R. 26.)

At the October Term, 1901, of the Probate Court, the said Gorman, as administrator in succession, filed his second settlement,(P. R. 27,) in which he shows the balance in his hands of $523.11, he having collected the sum of $335.25 on a judgment against James Fussell. (P. R. 4.)

On July 21st, 1903, he filed his third settlement in which he shows a balance in his hands of $481.88. (P. R. 28.)

On July 19th, 1899, which was more than six years after L. P. Featherstone had qualified as administrator of said estate and four years after he had left the State of Arkansas to take up his residence in Texas, two of his bondsmen, towit: E. Bonner and W. H. Coffey, the former of whom is one of the plaintiffs in error, in obedience to an order made by the Probate Court on February 20th, 1899, (P. R. 40,) and served on them by the sheriff of St. Francis county on the 18th day of March, 1899, appeared in said Court by their attorneys, Fizer & Beasley, and filed the final settlement of the said L. P. Featherstone as administrator, in which they show a balance due him of $23.57. (P. R. 29-30.)

To this settlement H. P. Gorman, administrator in succession, and M. E. Winsett, one of the heirs of said estate, and who owns one-half interest in same, appeared in Court by their attorneys at the October Term, 1899, and filed their exceptions as set forth herein. (P. R. 40-1-2.)

On January 29th, 1900, the Probate Court, all parties being present by their attorneys, sustained these exceptions and found a balance of $991.28 due

from the said Featherstone as administrator, and ordered him to pay the same over to H. P. Gorman, the administrator in succession. (P. R. 34, 35.)

From this judgment and order of the Probate Court, the said Featherstone and his sureties, E. Bonner and W. H. Coffey, took an appeal to the Circuit Court, which appeal was dismissed by the Court at the March Term, 1901, on the ground that no order granting an appeal had been entered by the Probate Court. (P. R. 5.)

On February 12th, 1900, suit was brought in the Circuit Court of St. Francis county by the said H. P. Gorman, administrator in succession, against E. Bonner and W. H. Coffey, two of the sureties of the said Featherstone as administrator, to enforce the payment of the said judgment of $991.28, which was rendered against him by the Probate Court. (P. R. 4.) In this suit, the said sureties, Bonner and Coffey, filed an answer and a cross-complaint, to which the plaintiff, Gorman, as administrator in succession, filed a demurrer, which was sustained by the Court, and judgment entered in favor of administrator Gorman, against said sureties for the said sum of $991.28. From which judgment they appealed to the Supreme Court, where it was affirmed October 10th, 1903, and is reported in 71st Ark., 480. (P. R. 5.)

To perpetually restrain the enforcement of this judgment of the Supreme Court of the State, E. Bonner, one of said plaintiffs in error, filed a bill in the Chancery Court of St. Francis county, Arkansas, at the December Term, 1903. (P. R. 1.)

To this bill Administrator Gorman and the heirs filed a demurrer on May 9, 1904, which was overruled by the Court, and they then filed an answer. (P. R. 8-13.)

The Chancery Court rendered a decree in favor of the plaintiff, E. Bonner, perpetually enjoining the said Henry P. Gorman, as administrator in succession, and the heirs at law of the said Mary A. Cole, deceased, from executing said judgment of the Supreme Court. (P. R. 52-53.) From this decree of the Chancery Court, Gorman, as administrator in succession, and the heirs at law, appealed to the Supreme Court, where it was on October 22d, 1906, reversed, annulled and set aside, and the cause remanded to said Chancery Court with directions to dismiss the complaint of plaintiffs for want of equity. (P. R. 58-61.) This opinion is reported in 80 Ark., 339.

At the December Term, 1906, of the Chancery Court of St. Francis county, a decree was entered upon the mandate of the Supreme Court. (P. R. 64-65.)

From this decree the said E. Bonner and E. L. Bonner, the latter being the surety on the injunction bond, prayed an appeal to the Supreme Court, which was granted. (P. R. 66.)

On March 16th, 1907, the appellees, H. P. Gorman, administrator, and others, filed a motion to advance and affirm as a delay case. (P. R. 68-9.)

On April 12th, 1907, the appellants, E. Bonner and E. L. Bonner, filed a response to the motion. (P. R. 70.)

On the 22d day of November, 1907, the Supreme Court granted the motion to advance and affirm the decree of the Chancery Court. (P. R. 72-73.)

On May 9th, 1907, appellants, Edward Bonner and Edward L. Bonner, obtained a writ of error from the United States Supreme Court to the Supreme Court of Arkansas, which was granted by the chief justice. (P. R. 76.)

A few weeks after he had qualified as administrator of the estate, Featherstone obtained deeds from Mrs. Wilkins and Mrs. Farley, two of the heirs of his intestate, to his wife, Alice W. Featherstone, to all of their interest in the lands belonging to the estate. The deed of Mrs. Wilkins is dated May 6th, 1893, and that of Mrs. Farley, May 13, 1893. (P. R. 2.)

He then assumed to act as agent for the other heirs in selling their interests in the house and lot in the town of Forrest City which had been the homestead of his intestate. At any rate he sold it to Mrs. Eddie C. Williams for $1000, and caused them to execute deeds to the same. Mrs. M. E. Winsett, one of the heirs and who owned a half interest in the estate, executed a deed to the purchaser on May 29th, 1893. On June 3, 1893, Mrs. Margaret Chapman and Mrs. Mattie D. Brooks executed a joint deed with Mrs. Alice W. Featherstone for their interest in the said homestead to the purchaser. And on June 7th, 1893, Mrs. Lola B. Jett conveyed her in terest. (P. R. 2.)

ARGUMENT.

I.

The contention of the plaintiffs in error, that the judgment of the Probate Court was fraudulent and void, and for that reason the judgments of the Circuit and Supreme Courts were also void, is unsupported by the evidence, without foundation in law, and deserves only a passing notice.

II.

No federal question was involved, and no decision upon a federal question was necessary or

made the ground of either judgment. And the decision of the Supreme Court is supported upon other grounds which are adequate by themselves and contained no federal question. And the plea that a federal question is involved, was presented to the Court too late.

The reasons alleged in the bill why the judgment of the Supreme Court against the sureties should be enjoined, are, first, that the judgment of the Probate Court was fraudulent and void, and second, the Court was without jurisdiction: charging that on Feb. 29th, 1900, when Featherstone was not present either in person or by attorney, the Probate Court illegally charged him as administrator with the $1000, the purchase money of the residence property.

Let us turn to the evidence upon which these allegations are based.

MR. J. R. BRASLEY, counsel for the sureties, testified. (P. R. 14.)

Q. How long have you lived in Forrest City?

A. I came here from Tennessee on March 20, 1899, and a few days afterwards formed a partnership with Mr. N. B. Fizer, a lawyer, and have lived here ever since.

Q. Were you acquainted with L. P. Featherstone?

A. No sir.

Q. Did you ever represent Featherstone in any settlement proceeding in the Probate Court of St. Francis county?

A. No sir.

Q. Did you represent E. Bonner and W. H. Coffey, two of the sureties of administrator, L. P. Featherstone, in a settlement proceeding in the Probate Court in January, 1900, in relation to the estate of Mary A. Cole, deceased?

A. Yes sir.

Q. How was it that you did not represent Administrator Featherstone on that occasion also?

A. Because I had not been employed by him to do so and had no authority to appear as his attorney.

Q. Did any one represent Administrator Featherstone on that occasion in the Probate Court?

A. No sir.

Q. Was he present, or had he been summoned or cited to appear?

A. No sir.

Q. Where was he living at that time?

A. At Galveston, Texas, I believe.

Q. When were you employed to represent two of the sureties, Bonner and Coffey, in that settlement proceeding in the Probate Court?

A. It was only a few days or perhaps a week before the matter came up for consideration.

Q. Did you try to get ready for the trial so as to protect the rights of the sureties whom you represented?

A. I did, but some of the papers were lost or mislaid and were not found until just before the trial, when it was too late for me to investigate and properly study the case.

Q. Did you know before the trial in the Probate Court that the heirs of Mrs. Cole had sold her residence property to Mrs. E. C. Williams and executed deeds themselves to the purchaser?

A. No sir, I never heard of it before the trial, and never heard of it during the trial. Nothing was said about the residence property. In the final settlement filed by Mr. Fizer as attorney for said sureties in July. 1899, and it was not alleged in the exceptions to that settlement account, that Administrator Featherstone was justly indebted to the Cole estate in a sum of $1,000.00 for said residence property, if I remember the pleadings correctly.

Q. It appears that Mr. Fizer signed the firm

name of Fizer & Beasley to the settlement account filed by him for said sureties. Did he consult you about it?

A. No sir. I think he was employed by said sureties before I came to Arkansas, and I knew but little about the matter, and took no interests or part in it until some time after he quit the practice of law, which he did about the first of December, 1899.

Q. Did you consider yourself as an attorney for said sureties from the fact that Mr. Fizer had signed the firm name of Fizer & Beasley to said settlement account?

A. No sir, I do not think I ever saw that settlement account until after Mr. Fizer quit the practice of law and I was specially employed by Bonner and Coffey to look after their interests.

In the deposition of L. P. Featherstone, taken at Galveston, Texas, August 21st and 22d, 1900, (P. R. 20,) he states:

Q. Please examine the order of the Probate Court of January 29th 1900, and make any comment on it you wish to n....e.

A. My first objection to the order of the Probate Court of January 29th, 1900, is that I am charged with $1,000.00 on account of the homestead sold to Eddie C. Williams, by the heirs which should not

be charged to me, it having been sold by the heirs, and not by me as administrator. The further objection is that I am charged with interest to the amount of $206.15, this is wholly wrong. I never at any time had in my possession as much as $200.00 for 30 days at a time. The legatees were always in need of funds and were always ahead of my receipts in their collections. I see that H. P. Gorman is reported to have collected $464.77 from L. R. Grobmyer. This amount, if my recollection is correct, should have been one-half of $956.00 which would have been $478.00.

Q. It appears that as guardian you conveyed the interest of one of the minor heirs, and that as purchaser, you and your wife conveyed the interest of Farley and wife, and Wilkins and wife in said residence property to Mrs. E. C. Williams. Now if you acted as agent for any of the heirs, in collecting the amounts due to them from the purchaser of said residence property, you may state for whom you acted, what amount you collected, and what amount you turned over to the parties entitled thereto.

A. I was acting as agent for some of the heirs in the sale of the homestead, and in order to close up the matter and accommodate the legatees I

caused my wife to buy and pay for the interest of Farley and wife and Williams and wife. I was guardian for young Sellers. I think I also represented Brooks and wife. The money derived from the sale was paid over to those I represented, either before or immediately after the consummation of the sale, either paid directly to them or to those that they had authorized and empowered to collect the same. In some instances these payments were made to merchants there, to whom the legatees were indebted.

This was all of the testimony adduced on the part of the plaintiffs in error in the Courts below to show that the Probate Court judgment was fraudulent and void.

Now let us look for a moment at the testimony adduced by the defendants in error.

W. L. Skellers, testifies (P. R. 42) as follows:

My name is W. L. Sellers; aged 26 years, residence Cross county, Arkansas, and occupation, a farmer.

Q. Who was your mother?

A. She was Kate Matthews before her marriage, and a niece of Mrs. M. A. Cole.

Q. Please state how much you have ever received from the estate of Mrs. M. A. Cole, deceased,

either through L. P. Featherstone, administrator, or others.

A. I have never received anything at all.

W. E. JETT testifies (P. R. 43) as follows:

My name is W. E. Jett, aged 57 years, residence St. Francis county. and occupation, a farmer.

Q. Please state what interest you have in this suit.

A. I have no interest personally, but my wife was a niece of M. A. Cole, deceased, and entitled to one-twelfth share in her estate.

Q. Do you know what amount your wife, Lola Jett, has received from the estate of the said M. A. Cole?

A. Yes, I represented her in all the transactions with L. P. Featherstone, the administrator, in trying to gather her share of said estate.

Q. State what you have received from L. P. Featherstone for her.

A. At the sale of personal property I bought $40.40 worth, and gave L. P. Featherstone my note for this amount. After the homestead was sold by Featherstone to E. C. Williams, he paid me $32.00 from the proceeds of said sale and surrendered me my note for $40.40, and took my receipt for the $72.40. This receipt was given on the 4th day of

Dec. 1898, and is the same receipt which he takes credit for as Voucher No. 7, filed with his final settlement. I afterwards received from him $33.50, making in all $105.90.

Q. How do you know that the $32.00 came from the sale of the homestead to E. C. Williams?

A. Because as soon as Featherstone had sold the property I went to him and taken up this note for $40.40 and he paid me this $32.00 in money.

Q. Did he tell you it was from the homestead?

(Q. Objected to as leading.)

A. Yes, he certainly did.

Q. Just state, Mr. Jett, what connection Mr. Featherstone had with the sale of the homestead to E. C. Williams.

A. He sold the place to Mr. Williams, as administrator of the Cole estate. It was said to be $1000.00 in cash. He collected the money and got the deeds up from the heirs, and I suppose he gave the deeds to Mr. Williams.

(A. objected to as incompetent and irrelevant.)

Q. When your wife executed the deed for her share in the homestead of Mrs. Cole, to whom was the deed delivered?

A. I delivered it to Mr. Featherstone.

Q. Did Featherstone pay to you at the time

you delivered the deed the consideration expressed in it?

A. He gave up the note to me for $40.40 and paid me $32.00 in money.

Q. When he paid you the money on the deed did he take your receipt for the $72.40?

A. Yes, he took my receipt for it.

Q. Mr. Jett, Mr. Featherstone has taken credit in this settlement for a receipt dated December 4th, 1893, for $72.50. Please state if this is the same receipt which you gave him at the time of delivering him the deed to your wife's share in the homestead?

A. Yes sir.

Q. Mr. Jett, the record in this cause shows that on the 29th day of January, 1900, there was a trial before the Probate Court of St. Francis county Judge George P. Taylor, Probate Judge, presiding, involving the final settlement of L. P. Featherstone as administrator of the estate of Mrs. M. A. Cole, deceased, and exceptions to said settlement filed by H. P. Gorman, administrator in succession, of said estate. Please state if you were present at the trial and did you testify at said trial as a witness.

A. I was there, but was not sworn to testify, but Judge Taylor asked me a good many questions about the case.

(Q. and A. objected to as incompetent and irrelevent.)

Q. Was there any testimony before the Court on that date to the effect that L. P. Featherstone sold this homestead property, and that some of his vouchers filed with said settlement went for money received from the proceeds of the said sale.

A. The principal question asked me that day was concerning the money for the sale of the Cole residence. I don't remember whether the same questions were asked anybody else but me.

(Q. and A. objected to as incompetent and irrelevant.)

Q. Was there any testimony before the Court that day to the effect that several of the heirs of the Mary A. Cole estate had sold and conveyed their interest in said estate to other parties.

A. The Judge asked me if I knew that these heirs had conveyed their interest in the estate to other parties, and I told him that I knew they had.

(Q. and A. objected to as incompetent and irrelevant.)

Q. Mr. Jett, state if you remember what attorneys were present during the trial and taking part in it.

A. Mr. Gatling, and I believe Mr. Beasley and

Mr. Gorman were present there, and I think Mr. Fizer was there part of the time. I am not certain whether Mr. Fizer was there or not, but it seems to me that he was.

(Q. and A. objected to as incompetent and irrelevant.)

JANE MCMILLAN testifies, (P. R. 45) as follows:

Q. State who your mother was and her relation to Mrs. M. A. Cole, deceased.

A. My mother was Kate Matthews before marriage, who was a niece of Mrs. M. A. Cole, deceased.

Q. State how much property or money of any kind you have ever received from the estate of Mrs. M. A. Cole, deceased, and through whom?

A. We received $25.00 from Featherstone for the house and lot here in town, the house she lived in at the time of her death. Featherstone wrote me and wanted me to sign the deed to the residence property. We did not sign the deed for a short time and then we signed it, sent it to him and he sent us $25.00. That is all we ever received from him in any way.

WALTER GORMAN testifies as follows: (P. R. 45.)

My name is Walter Gorman, aged 53 years, residence, Forrest City, Arkansas, and occupation,

lawyer. I have represented H. P. Gorman, as administrator, in succession of the estate of Mary A. Cole, deceased, from Jan. 1st, 1899, until the present time, in this proceeding against L. P. Featherstone as the former administrator of said estate and his bondsmen.

On the 20th day Jan. 1899, the Probate Court of St. Francis county entered an order commanding the said L. P. Featherstone, the former administrator of said estate, and his bondsmen, W. E. Jett, P. B. Wilkins, W. H. Coffey and E. Bonner, to appear in said Court on the first day of the April term thereof, and file a final settlement of the account of the said L. P. Featherstone as such administrator.

On the day named in said order, N. B. Fizer appeared, entered the appearance of Featherstone, and in Featherstone's behalf,and stated that Featherstone had not been able to find some of his Vouchers, and requested an extention of the time, thirty (30) days longer, for the filing of this settlement. (For this order see P. R. 48.) N. B. Fizer was at that time a practicing attorney and a member of the St. Francis Bar.

Fizer frequently came to me after the above order was entered and pleaded for further time, on the ground that his client, Featherstone, lived in

Texas, and his only communication was by correspondence, to which I yielded, and finally filed the settlement on July 19, 1899, signed by Fizer & Beasley, a law firm composed of N. B. Fizer and J. R. Beasley. Exceptions to this settlement were filed at the October term, 1899. N. B. Fizer left this county in December, 1899, or the following January.

The settlement and exceptions thereto referred to above, came up for hearing before Judge George P. Taylor on Jan 29th, 1900. (For these exceptions see P. R. 41.)

At said trial oral testimony was offered to show that Featherstone was not entitled to credit for the Vouchers named in the exceptions, and had not charged himself with all the sums that had gone into his hands. In ruling on the exceptions, the language of the Court, as near as I can recall it was, "I cannot allow the administrator credit for the Vouchers named in the exceptions without charging him up with the $1000.00 received from Williams for the homestead and the other items claimed, and I think it is best to state the account by charging with all the items claimed, and by giving him credit by all the Vouchers, as the difference will be small." He then took the papers, made the statement himself and the result varied only $1.90 from

the judgment asked for in the exceptions.

Mr. J. R. Beasley was present, contending for the confirmation of the settlement. Mr. John Gatling, attorney, was present in the interest of Mrs. Winsett, and I for the present administrator. The testimony brought out fully the fact that several of the heirs to the estate had conveyed their interest to Featherstone, who had in turn reconveyed to Brandon & Baugh, which was necessary to explain the receipts signed by W. P. Brandon and Fussell, Graham & Co., and also the fact that Featherstone had sold the homestead to E. C. Williams for $1000.00, procured deeds from the several heirs, collected the money from Williams, and in paying it out to the several heirs had taken their receipts as administrator, and was claiming credit for them in him settlement.

I deny that any information was withheld from the Court. Don't know just what information Mr. Beasley had about the case. My present impression is, that Mr. Beasley became indignant at some of the rulings of the Court, and left the room before the trial was finally concluded, though I am not positive of this.

I remember very positively that N. B. Fizer, his law partner, was in possession of all the facts, both

as to the sale of the homestead property to E. C. Williams, and the conveyance by several of the heirs for their shares in the other property. Fizer discussed the case on several occasions with me, and his only expressed contention was that the deeds executed by the heirs acknowledged receipt of the consideration paid for the property, and they were therefore estopped from claiming that several vouchers afterwards given to Featherstone were intended to be given for the sale price $1000.00 of the homestead.

MRS. M. E. WINSETT testifies (P. R. 49) as follows:

Q. State your name, age, residence and occupation?

A. Mrs. M. E. Winsett, aged 72 years, residence, McLmoresville, Tenn., occupation, housekeeper.

Q. State what relation, if any, you were to Mrs. Mary A. Cole, who died in the town of Forrest City, St. Francis county, Arkansas, in the early part of the year, 1893, and of whose estate L. P. Featherstone qualified as administrator?

A. I am her sister.

Q. State if you were acquainted with the said L. P. Featherstone, and ever saw him?

A. I never saw him.

Q. State whether you ever had any correspondence with the said Featherstone in relation to the business and settlement of said estate, and if you did, please give as near as you can the substance of that correspondence, and if you have now any letters that he wrote you in regard to this business, please attach them to this deposition.

A. All the correspondence has been between Mr. Featherstone and my son-in-law, S. M. Bigham, who is acting as my agent in the Cole estate.

Q. The deed records of this county show that the heirs of the estate of the said Mary A. Cole, including yourself, shortly after her death, executed a deed to a residence here in Forrest City, which had been her homestead, to Mrs. Williams, for the sum of $1000.00. Please state if you know who procured them to sign this deed, and state how much of that $1000.00 you received and who paid it to you.

A. Mr. Featherstone, the administrator, caused me to sign the deed. I only received $350.00. This amount was paid to me by Mr. Featherstone.

Q. The settlements of the said L. P. Featherstone, as administrator of the said Mary A. Cole, which are filed in the Probate Court of this county, show that he files as voucher in one of his settlements and takes credit by the sum of $350.00, which

was paid by him to you, and filed your receipt for this amount as such voucher Please state what this money was paid by him to you for.

A. It was paid to me as part of my one-half interest in the Mary A. Cole homestead.

Q. Please state whether the said L. P. Featherstone, as administrator, has ever paid you any other amount; if so, how much?

A. I have only received $350.00 from the estate.

S. M. Bigham testifies (P. R. 50) as follows:

Q. State your name, age, residence and occupation.

A. S. M. Bigham; aged 47 years; I live at McLemoresville, Tennessee; occupation, druggist.

Q. State if you are acquainted with Mrs. M. E. Winsett, who lives in your town; and if so, state how long you have known her.

A. I have known her all my life.

Q. If you are in any way related to her, please state how.

A. I am her son-in-law.

Q. Are you acquainted with her business affairs, and if so, state to what extent, and especially as to her interest in the estate of Mary A. Cole, who died in the town of Forrest City, Arkansas, in the early part of the year 1893.

A. I know that she is entitled to a half interest in the M. A. Cole estate.

Q. Are you acquainted with L. P. Featherstone, who was the administrator of the estate of the said Mary A. Cole? Did you ever have any correspondence with him while he was acting as such administrator; and if so, please state the substance of that correspondence as near as you can, and if you have any letters from him, please attach them to this deposition.

A. I am acquainted with Mr. Featherstone and have had some correspondence with him in regard to the Mary A. Cole estate.

Q. Do you know whether the said Featherstone ever paid Mrs M. E. Winsett any part of her interest in the estate of the said Mary A. Cole; if so, how much; and state whether or not you know that this is all that he ever paid her, and state how and why you know it.

A. I know he paid her the $350.00. I know this is all he ever paid her, because all the correspondence was between myself and Mr. Featherstone.

Q. The said L. P. Featherstone, as administrator, in his settlement in the Probate Court in this county, has taken credit by the amount of $350.00 paid by him to Mrs. M. E. Winsett. Please state if

you know from what source this money came.

A. It was paid to her as part of her one-half interest of the Mary A. Cole homestead.

It is contended by the plaintiffs in error that the judgment of the Probate Court of January 29th, 1900, for a balance due from Featherstone, as administrator, for the sum of $991.28 was void. First, because it was rendered when Featherstone was not present either in person or by attorney; and second, because the Court illegally charged him with the $1000 received from the residence property. (P.R.4.)

The claim that Featherstone was not present by attorney is not supported by the evidence. On the contrary, the proof is that Featherstone and his bondsmen were represented by their attorneys through all of these transactions.

The record shows (P. R. 48) that on the 17th day of April, 1899, in response to an order of the Probate Court; made on the 20th day of February, 1899, commanding Featherstone and his bondsmen to appear in that Court on the first day of the next April term thereof, and file a final settlement of the account of the said Featherstone as the former administrator, a certified copy of which had been duly served on the sureties, L. P. Featherstone appeared by his attorney, N. B. Fizer, and entered his appear-

ance, and moved the Court to extend the time for filing the final settlement for thirty days, which motion was granted. In pursuance of this order of the Court, two of the sureties, to-wit: E. Bonner and W. H. Coffey, by their attorneys, Fizer and Beasley, appeared in Court and filed the settlement on July 19, 1899. This settlement was not approved by the Court, and on October 30th, 1899, H. P. Gorman, as administrator in succession, and M. E. Winsett, one of the heirs, who owns a half interest in the estate, filed their exceptions to it. (P. R. 41-42.) No action was taken by the Court on this settlement or the exceptions thereto until the 29th day of January, 1900, when the matter came up for trial, and the judgment for $991.28 was rendered against Featherstone. (P. R. 34-35.) This judgment recites that the two sureties, Bonner and Coffey, and L. P. Featherstone, the original administrator, appeared by their attorney, J. R. Beasley. In addition to this, Mr. Walter Gorman testifies that N. B. Fizer appeared and entered the appearance of Featherstone, and requested an extension of thirty days time for filing the settlement, and that the settlement was afterwards filed by Fizer & Beasley, as attorneys for the sureties, and that on the day of the trial, January 29th, 1900, Mr. J. R. Beasley was present and con-

tended for the confirmation of the settlement. (P. R. 46–47.) Hence it would seem that the proof is sufficient to set at rest the contention that the judgment was rendered against Featherstone when he was not present in court, either in person or by attorney. In fact, we do not understand that it was necessary for Featherstone to be present in Court when this judgment was rendered anyway. He was beyond the jurisdiction of the Court, and had been for about five years. Had he been summoned by constructive service, no personal judgment could have been rendered against him and his sureties were the proper parties to appear and make the settlement for him.

The second reason alleged why the Probate judgment was void was because the Court charged administrator Featherston with the $1000 as proceeds from the sale of the homestead, which was not sold by him as administrator, but by the heirs themselves, and that the Court was not aware at the time of the facts. This charge is also unsupported by the evidence. Mr. Gorman testified that the matter was thoroughly discussed before the Court, and that the Judge remarked that he could not allow the vouchers presented by the sureties as credits in favor of the administrator, without also charging

him up with the $1000 collected from the homestead, and that he thought it best to state the account by charging him with all the items claimed and by giving him credit by all the vouchers, as the difference would be small. And that he (the Probate Judge) took the papers, made the statement himself, and the result varied only $1.90 from the judgment asked for in the exceptions. The vouchers were objected to because they were not legal and proper charges against the estate, as can readily be seen by reference to them on pages 30–33 of the printed abstract. The evidence satisfied the Court that these receipts were given by parties for moneys received by them from the sale of the homestead. And even if they had been for moneys received by them from Featherstone. as administrator, he was not entitled to credit by them at that stage of the proceedings, because the debts which had been probated against the estate had not been paid, except the $40.00 on the I. H. Lutz account, which is shown by Voucher No. 5. (P. R. 31.) This claim was probated against the estate and that voucher was correct, and the only one that was. The administrator had no right to make payments to some of the distributees of the estate or to the assignees of their interests before the probated debts had been paid and without hav-

ing been ordered by the Court to do so. And further, by reference to these vouchers, it may be observed that they must have been paid out of the proceeds of the homestead, because they were dated, the most of them, in 1893, shortly after Featherstone had taken charge of the estate, and had no money to pay them with, because he had not then sold the real estate. Several of the heirs testified that they had never received anything from the estate or from the sale of the homestead, except the amounts mentioned in these vouchers. At any rate, it was the decision and judgment of the Court that Featherstone, as administrator, was not entitled to credit by them, unless they were offset by the proceeds of the homestead, and in this way the account was stated: Featherstone was credited by the vouchers, all of them, including the one for $350.00 from Mrs. M. E. Winsett, and credited by the $1000 received from the homestead and judgment rendered against him for $991.28. There was no fraud or concealment about it. The judgment is correct, no matter by what process the amount was arrived at. If the contention of the sureties is right, and that Featherstone should have been credited with all of these vouchers, without being charged with the $1000 from the homestead, then Featherstone did not owe

the estate a cent. But this cannot be correct, because it is shown by the records that when he left Arkansas in 1895, after having sold the real estate, and without having paid the probated claims. He had collected the first one of the Grobmyer notes as given for the purchase of the storehouse in Forrest City, for $488.00; he had collected $196.00 from the sale of the 33 acres of land, and had collected from J. M. Brown one year's rent for the storehouse, before the sale of it, amounting to $180.00: making a total of $854.00. The Court, in the judgment of January 29th, 1900, charged him with interest on the amount he had in his hands when he left the estate, amounting to $206.15, and he owed the estate on his first settlement $106.15, making a total debit of $1166.30. And he was entitled to credit by $40.00 paid on the I. H. Lutz probated claim, $7.50 printer's fee, and $85.40 as his commissions, making a total credit of $132.90, and leaving a total balance due from him to the estate of $1033.40. And this is true, without taking into account either the vouchers he claimed credit for, on the one hand, or charging him with any part of the proceeds of the homestead on the other. Hence it is a fact that the Probate Court committed no error in rendering judgment against him for $991.28.

Thus it appears that the appellants in error failed to establish, by the evidence, their claim that there was fraud in the Probate judgment.

If the judgment was erroneous, their remedy was to have it corrected on appeal to the Circuit Court. They attempted to take an appeal, but it was dismissed in the Circuit Court, because it had not been taken according to law. The Constitution of Arkansas provides, Art. VII, Sec. 35. "Appeals may be taken from judgments, and orders of the Probate Court to the Circuit Court under such regu lations and restrictions as may be prescribed by law." Kirby's Digest of the Arkansas Statutes, Sec. 1348, provides that "appeals may be taken to the Circuit Court from all final orders and judgments of the Probate Court at any time within twelve months after the rendition thereof, by the party aggrieved filing an affidavit and prayer for appeal with the clerk of the Probate Court, and upon the filing of such affidavit, the Court shall order an appeal at the term at which such judgment or order shall be rendered, or at any term held within twelve months thereafter. The party aggrieved, his agent or attorney, shall swear in said affidavit that the appeal is taken because he verily believes that he is aggrieved, and is not taken for the purpose of

vexation or delay." In Matthews vs. Lane, 65 Ark. 419, the Supreme Court speaking of this statute says: "It is necessary, to invest the Circuit Court with jurisdiction, that it appear that the affidavit and prayer for appeal were presented to the Probate Court, and that the appeal was granted." The plaintiffs in error, in attempting to take an appeal from the Probate Court in this case, failed to comply with this statute, and the appeal was dismissed in the Circuit Court. Whether they ever appealed from this decision to the Supreme Court, is not shown by the record.

The Probate Court is the Court of Record, and invested by the constitution with general jurisdiction and full power over the matters committed to it, and is to be regarded as a superior Court.

11 Ark., 519; 19 Ark., 499.

The adjudications by the Probate Court of the amount of the administrator's liability is conclusive evidence against his sureties.

46 Ark., 320.

Having failed to effect their appeal from the Probate Court, the next step of the plaintiffs in error was, when they were sued on the bond in the Circuit Court, to raise the cry of fraud, which they are still keeping up, but the Circuit Court dismiss-

ed their answer and cross-bill from which they appealed to the Supreme Court. In the opinion in the case in the Supreme Court, 71 Ark., 480, Chief Justice Bunn said: "The said answer to the complaint on the bond was a collateral attack in the Circuit Court upon the judgment of the Probate Court, from which the appeal to the Circuit Court had been taken, or attempted to be taken, and there dismissed as aforesaid.

If the judgment of the Probate Court was wrong, it was a mere error, and should have been corrected on appeal or other proper direct proceeding; and if, in fact, the order of the appeal had been made and entered in the Probate Court, that was a perfect defense that could have been made against the order dismissing the appeal in the Circuit Court. If no order had been entered by the Probate Court granting the appeal, notwithstanding a proper affidavit had been made and filed therein, there was a way, perhaps, to compel the Probate Court to do its duty in the premises, and thus the order of dismissal be prevented."

Beebe vs. Lockett, 6 Ark., 422.

As the record stands, there is no appeal taken, for a mere prayer for appeal does not avail without the necessary order of the Court, and the imperfect

appeal to the Circuit Court was properly dismissed.

Neal vs Peay, 21 Ark., 98.

The effort to correct the alleged error in allowing the debit of $1000 against the defendant by allegation of fraud on the part of the Probate Court is not allowable, because the judgment of that Court will be presumed to be correct, unless corrected for error on appeal or other direct proceeding. The settlement of an administrator after confirmation may be surcharged and falsified in chancery, but this rule does not apply to the correction of alleged errors on the part of the Probate Court: for all such errors, however gross, will be held and presumed to be mere errors of judgment, to be corrected as aforesaid. It would unsettle the uniform rules of practice to reverse the judgment on the grounds presented in this case, and the same must be affirmed."

Notwithstanding this decision, expressed as it is in clear and unmistakable terms, E. Bonner, one of the sureties and defendants in that suit, and one of the plaintiffs in error, filed the bill in this case to enjoin its collection. (P. R. 1.) In this case nothing new was set up, and the suit simply amounted to a threshing of the old straw that had already been threshed in the suit at law on the bond. The

plea for invoking the aid of the Chancery Court was the same that was set up in the answer in the suit on the bond, and that was that the Probate judgment was void, because Featherstone was charged with the $1000.00 as the proceeds of the sale of the residence property. The Chancellor sustained the bill and enjoined the judgment, and Gorman, the administrator in succession, appealed to the Supreme Court, and we now ask the attention of the Court to the opinion of the Supreme Court in this case. (P. R. 60.)

Justice Riddick, in delivering the opinion, said:

"This is an appeal by H. P. Gorman, administrator in succession, and the heirs of Mary A. Cole, from a judgment of the Chancery Court enjoining them from enforcing a judgment of the Circuit Court, which the administrator had recovered against E. Bonner and W. H. Coffey, bondsmen of L. P. Featherstone, the first administrator of that estate.

"The Chancellor found that in the final settlement which the Probate Court made of the accounts of L. P. Featherstone, as such administrator, the Probate Court charged him with $1000 as the proceeds of the sale of the residence property of Mrs. Cole, when the fact was that Featherstone did not

sell such property as administrator or under an order of the Probate Court, but sold it as the agent of the heirs of that estate, who were the owners of it. The Chancellor found that this judgment of the Probate Court, charging Featherstone with the proceeds of such sale, was therefore void and in law fraudulent, as to the bondsmen of Featherstone. But it does not follow, because the judgment of the Circuit Court was based on a void or fraudulent judgment of the Probate Court, that it is also either void or fraudulent. When these parties were sued in the Circuit Court, they should have set up any defense they had against such action, whether the same was legal or equitable. If the judgment of the Probate Court was fraudulent or void, that could have been alleged.

"A defendant cannot, under the Code system of procedure, let judgment go against him at law upon a legal liability, and then enjoin the judgment in equity upon equitable grounds which were known before the judgment at law. The effect of the Code procedure has modified, and to a large extent rendered obsolete, the ancient jurisdiction of equity over judgments at law. The rule now is, that parties must litigate the whole controversy in one action, and a defendant who has an equitable defense

to an action at law is not now without a remedy against such action, for he can interpose such defense by answer or counterclaim, and, if necessary, have the case transferred to the Chancery Court. Kirby's Digest, Sec. 6098. If he fails to do this and allows judgment at law to go against him, he may find that his defenses have been cut off by such judgment, and that he is without a remedy, either in law or equity. Reeve vs Jackson, 46 Ark., 272; Ward vs Derrick, 57 Ark., 500; Moore vs McCloy, 70 Ark., 505; Daniel vs Garner, 71 Ark., 484.

"It is true that Bonner, the plaintiff in this action to enjoin the judgment at law against him, did undertake to set up the same matters on which he bases his right to relief here as a defense to the legal action. He undertook to show that the Probate Court had improperly charged Featherstone, as administrator, with $1000, as proceeds of land which he did not sell as administrator, but there was no allegation in the answer that Featherstone did not have due notice of this proceeding in the Probate Court. The judgment of the Probate Court recited that he appeared by his attorney, while the answer of Bonner simply alleged that neither he nor his bondsmen were present at the time the Probate Court made the settlement. This did not show that

he was not duly served with notice, or that the recital that he appeared by attorney was not true. If he appeared by attorney, he had a plain remedy by appeal, and on that or some other ground a demurrer was sustained to the answer, and counterclaim of the sureties alleging that the judgment of the Probate Court was void as to them. They pleaded no further, and final judgement went against them at law.

"Counsel for appellants have labored to show that the judgment or the Probate Court was substantially correct, by reason of the fact that the Court, while it made improper charge against the administrator, also allowed him improper credits. But that is now immaterial, for it was settled by the judgment of the Circuit Court, which was based on this order of the Probate Court. That judgment at law was rendered by a Court of competent jurisdiction against parties who had been duly summoned and who appeared and made defense. If there were errors in that proceeding, a court of equity has no power to correct them, for such courts do not sit as courts of review upon the proceedings of the courts of common law. Reeve vs Jackson, 46 Ark., 272.

"It is not alleged or shown that there was any

fraud in the procurement of the judgment at law, and we see no valid reason why it should be enjoined. The judgment of the Chancery Court to that effect will be reversed, with an order to dismiss the complaint for want of equity."

This case is reported in 80 Ark., 339.

In Williams vs Risor, 84 Ark., 60, decided July 22, 1907, the Court said: "The Probate Court had jurisdiction to hear and determine the question as to whether the account presented by Miss Williams was a valid claim against the estate. Its judgment in her favor cannot be overturned by showing that the Court erred in deciding in her favor, for that should have been corrected by an appeal from the judgment of the Probate Court. In order to overturn that judgment by a proceeding in the Chancery Court, it must be shown not only that there was fraud in the original cause of action upon which the judgment of the Probate Court was based, but that the judgment of the Probate Court allowing the claim of Miss Williams was obtained by fraud. It is not enough to show that the claim was barred by the statute of limitations. For the judgment of the Probate Court will not, in the absence of proof that it was obtained by fraud, accident or mistake, be set aside by a count of equity, on the ground

that the claim was unjust, or that it was barred by the statute of limitations, and in our opinion no fraud was shown."

It is unnecessary, we think, to pursue this line of argument any further; in fact, we fear that we have already incurred the risk of being tedious. The cause of all of the supposed woe on the part of the plaintiffs in error, was the failure on their part to take an appeal from the judgment of the Probate Court. But they have had their day in court, and their rights and claims have received due consideration.

One of the errors complained of by the plaintiffs in error in the Supreme Court of the State against the decree of the Chancery Court in rendering judgment on the mandate of the Supreme Court, was that it rendered a decree against E. Bonner and E. L. Bonner, his surety, on the injunction bond, for interest on the judgment at law from the date of the injunction. (P. R. 70.)

Section 3998 of Kirby's Digest of the Statutes of Arkansas provides: "Upon the dissolution, in whole or in part, of an injunction to stay proceedings upon a judgment or final order, the damages shall be assessed by the Court, which may hear the evidence and decide in a summary way, or may, at

its discretion, cause a jury to be empannelled to find the damages."

Section 3999 provides: "Where money is enjoined, the damages may be at any rate per cent on the amount released by the dissolution, which, in the discretion of the court, may be proper, not exceeding ten per cent."

Section 4000 provides: "Where a delivery of property has been delayed by the injunction, the value of the use, hire or rent thereof shall be assessed."

These are the only cases in which the Statutes contemplate that damages shall be assessed upon the dissolution of an injunction, where the injunction was to stay proceedings upon a judgment or final order.

Stanley vs Bonhar, 52 Ark., 354,
Greer vs Stuart, 48 Ark., 21.

In this case the Chancery Court rendered a decree against E. Bonner, the principal, and E. L. Bonner, the surety, in the injunction bond, for interest on the amount of the judgment from the date of the issuance of the injunction, at the rate of six per cent. This was not error.

II.

No Federal question is involved in this case.

The plaintiffs in error have been deprived of no right guaranteed to them by the Constitution of the United States. The decision of no Federal question was necessary in the trial of the case in the State courts, or made the ground of any decision that was rendered.

And the plea that a Federal question is involved in this case was raised too late.

In the suggestion that a Federal question is involved in this case, the only reason assigned is, "Because said judgment of the Circuit Court of St. Francis County, which was based upon the void and fraudulent judgment of the Probate Court, was null and void, and was not 'due process of law,' for the reason that the Circuit Court refused to consider the merits of the sufficient defense set up in the answer and cross-complaint of the defendant, and was in conflict with the Fourteenth Amendment to the Constitution of the United States, and to the Act of Congress, enacted on the 20th day of April, 1871, entitled "An Act to enforce the provisions of Fourteenth Amendment to the Constitution of the United States, and for other purposes;" and the same disregard of said Fourteenth Amendment and Act of Congress, which made the judgment of the Circuit Court a nullity, affected also the judgments

of the Supreme Court, and the judgment of the Chancery Court upon said mandate, and rendered them all invalid." (P. R. 70–71.)

We insist that this raised no Federal question, because the Supreme Court of the State, which had final jurisdiction in the matter, had already decided the question, and said in the opinion, "That judgment at law was rendered by a court of competent jurisdiction against parties who had been duly summoned, and who appeared and made defense. If there were errors in that proceeding, a court of equity has no power to correct them, for such courts do not sit as courts of review upon the proceedings of the courts of common law." (P. R. 61.)

In Hamlin vs Western Land Co., 147 U. S., 531, Mr. Justice Brewer, in the opinion, said: "A real and not a fictitious Federal question is essential to the jurisdiction of this Court over the judgments of State courts."

Millinger vs Hartupee, 6 Wall., 258.
New Orleans vs New Orleans Water Works Co., 142 U. S., 79–87.

In the latter case it was said that "the bare averment of the Federal question is not in all cases sufficient. There must be at least color of ground for such averment, otherwise a Federal question

might be set up in almost any case, and the jurisdiction of this Court invoked simply for the purpose of delay."

In Central Land Co. vs Laidley, 159 U. S., 112, Mr. Justice Gray delivering the opinion, said: "When parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of the State court does not deprive the unsuccessful party of his property without due process of law, within the Fourteenth Amendment to the Constitution of the United States."

Walker vs Sauvinet, 92 U. S., 90.

Head vs Amoskeag Co., 113, U. S., 9, 26

Morley vs Lake Shore R.R., 146 U. S., 162, 171.

Bergmann vs Backer, 157 U. S., 655.

The record must show on what grounds the decision of the matter in which the Federal question is alleged to have been involved was made.

Caperton vs Bower, 14 Wall., 216.

In Capital National Bank of Lincoln vs First National Bank of Cadiz, 172 U. S., 425, Mr. Chief Justice Fuller, delivering the opinion, said: "The writ of error from this Court to revise the judgment of a State court, can only be maintained when within the purview of Section 709 of the Revised Stat-

utes. If the denial by the State court of a right under a statute of the United States is relied on as justifying our interposition, before it can be held that the State court thus disposed of a Federal question, the record must show, either by the words used or by clear and necessary intendment therefrom, that the right was specifically plain; or a definite issue as to the possession of the right must be distinctly deducible from the records, without an adverse decision of which the judgment could not have been rendered. Moreover, even though a Federal question may have been raised and decided, yet if a question, not Federal, is also raised and decided, and the decision of that question is sufficient to support the judgment, this Court will not review the judgment. In our opinion no Federal right was specifically set up or claimed in this case at the proper time or in the proper way; nor was any such right in issue and necessarily determined; but the judgment rested on non-Federal grounds, entirely sufficient to support it. The record disclosed no Federal question asserted in terms, save in the application to the Supreme Court for a rehearing when the suggestion came too late."

In the case of Murdock vs. Memphis, 20 Wall. 635, which was a case involving the consideration of

Act of February 5th, 1867, Ch. 28, 14. Stat. L. 386, Mr. Justice Miller delivering the opinion said: "It is essential to the jurisdiction of this Court over the judgment of the State Court, that it shall appear that one of the questions mentioned in the act must have been raised and presented to the State Court.

"Second. That it must have been decided by the State Court, or that its decision was necessary to the judgment or decree rendered in the case.

"Third. That the decision must have been against the right claimed or asserted by plaintiff in error, under the Constitution, treaties, laws or authority of the United States.

"Fourth. These things appearing, this Court has jurisdiction and must examine the judgment so far as to enable it to decide whether this claim of right was correctly judicated by the State Court.

"Fifth. If it finds that it was rightly decided, the judgment must be affirmed.

"Sixth. If it was erroneously decided against plaintiff in error then this Court must further inquire whether there is any other matter or issue adjudged by the State Court, which is sufficiently broad to maintain the judgment of that Court, notwithstanding the error in deciding the issue raised by the Federal question. If this is found to be the case, the

judgment must be affirmed without inquiring into the soundness of the decision on such other matter or issue."

In California Powder Works vs. Davis, 151 U. S., 389, 393, this Court said: "That in order to give this Court jurisdiction on writ of error to the highest Court of a State in which a decision could be had, it must appear affirmatively not only that a Federal question was presented for decision by the highest Court of the State having jurisdiction, but that its decision was necessary for the determination of the cause, that it was actually decided, or that the judgment as rendered, could not have been given without deciding it, and where the decision complained of rests on independent grounds not involving a Federal question and broad enough to maintain the judgment, the writ of error will be dismissed by this Court without considering any Federal question that may also have been presented." And referring to Eustis vs. Bolles, 150, U. S. 361.

See also Rutland R. Co, vs. Central Vermont R. Co., 159 U. S., 630, in which this Court said: "That where a State Court, in rendering judgment decides against the plaintiff in error upon an independent ground not involving a Federal question and broad enough to support the judgment, this Court will

dismiss the writ of error without considering the Federal question."

In the case of Arkansas Southern Railroad Co. and Geo. C. Griffith, plaintiffs in error, vs. German National Bank, defendant in error, decided by this Court December 2, 1907, and reported in the Supreme Court Reporter, Vol. 28, No. 3, page 78, Mr. Justice Holmes, delivering the opinion said: "But according to the well settled doctrine of this Court, with regard to cases coming from State Courts, unless a decision upon a Federal question was necessary to the judgment, or in fact, was made the ground of it, the writ of error must be dismissed. And even when an erroneous decision upon a Federal question is made a ground, if the judgment also is supported upon another which is adequate by itself and which contains no Federal question, the same result must follow as a general rule. Moreover, ordinarily this Court will not inquire whether the decision upon the matter not subject to its revision was right or wrong."

And the following cases are cited: Murdock vs. Memphis, 20 Wall, 590; Hale vs. Akers, 132 U. S. 564; Leathe vs. Thomas, No. 11, 1907, 207 U. S. 93.

In the case of St. L., I. M. & S. Ry. Co. vs. Taylor, decided by this Court May 18, 1908, and

reported in Supreme Court Reporter, Vol. 28, No. 14, page 616.

Mr. Justice Moody in the opinion said: "But we have not the power to correct mere errors in the trials in State Courts, although affirmed by the highest State Court. This Court is not a general Court of Appeals with the general right to review the decisions of State Courts. We may only inquire whether there has been an error committed in the decision of those Federal questions which are set forth in section 709 of the Revised Statutes."

All questions of fact are settled by the decision of the State Court. Hedrick vs. Atchison R. Co., 167 U. S. 673; 174 U. S. 96.

In this case not only the judgment of the Probate Court recites the fact, but the evidence clearly shows that the plaintiffs in error were represented by counsel, so there was no want of "due process of law." The evidence also shows there was no fraud in said judgment and as the Supreme Court has said, if it was erroneous, their remedy was by appeal. And this they failed to avail themselves of.

The Federal question was raised too late. It was first suggested on the second appeal to the Supreme Court of the State, and then only in response to the motion of the appellee H. P. Gorman, adminis-

trator in succession, to advance an affirm as a delay case. (P. R. 70.) Where the Federal question is first raised on the second appeal and the State Court refuses to consider it, it comes too late. Union Mutual Life Insurance Co. vs. Kirchoff 169 U. S. 110.

When the question was raised the Supreme Court of the State had considered and finally settled all of the issues involved, and it was then too late, The question where not presented prior to the decision of the Court of last resort, comes too late. Bollin vs. Nebraska, 176 U. S. 83; Citizens Saving Bank vs. Owensboro, 173 U. S. 636.

It is of no avail to raise the question in the petition for a writ of error where it had not already been raised in due time in the State court.

Johnson vs N. Y. Life Ins. Co., 187 U.S., 496
Simmerman vs Nebraska, 116 U. S., 54.
Meyer vs Richmond, 172 U. S., 82.

We think no sufficient cause has been shown by the plaintiffs in error for invoking the jurisdiction of this Court, and that the writ of error should be dismissed.

All of which is respectfully submitted.

JOHN GATLING,

Counsel for Defendants in Error.